

10 Pitfalls

in German employment litigation



German (employment) litigation differs in key respects from litigation abroad and is often uncharted territory for foreign clients. This particularly true given that any employee can contest a termination of the employment relationship before a labor court, regardless of the actual facts. However, litigation in Germany is typically driven by the goal of achieving swift proceedings and reaching a mutually agreeable solution. Foreign clients should be aware of certain pitfalls and concepts that are unique to German employment litigation compared to foreign jurisdictions.

1 Specific competent courts

Labor courts have jurisdiction over all individual civil law disputes between employees and employers that arise in connection with an employment relationship – including its initiation, ongoing obligations, and termination. They are also responsible for matters of collective labor law, especially disputes between employers and works councils. In Germany, the labor court system is separate from the general civil court system, ensuring that labor court judges exclusively handle employment-related matters.

In contrast, civil courts are competent to hear disputes involving corporate board members and managing directors, provided these individuals are not classified as employees.

2 Observe local jurisdiction

Claims must be filed with the court that has proper local jurisdiction. Employees typically bring lawsuits before the labor court located in the area where they perform their work – often their (home) office. Alternatively, they may choose the court in the district where the employer's registered office is located.

Even if the employer is a company incorporated outside of Germany (e.g., in the UK or USA), it may still be sued before a German labor court if the employee usually performs their work in Germany.

When an employer initiates legal proceedings against an employee, jurisdiction lies either with the court at the employee's place of residence or the location where the work is performed. If a claim is filed with a labor court that lacks local jurisdiction, the case will be transferred to the correct court, which may result in delays.

3 Choose the appropriate type of proceeding

Legal disputes before German labor courts fall into two main categories: judgment proceedings (*Urteilsverfahren*) and resolution proceedings (*Beschlussverfahren*). The appropriate procedure depends primarily on the nature of the dispute and the type of court decision sought – either a judgment or a resolution.

In judgment proceedings, which are similar to civil litigation, the parties are responsible for presenting the relevant facts and providing supporting evidence. The most common claims in these proceedings are actions for protection against dismissal and claims for (variable) compensation.

In contrast, resolution proceedings follow the principle of official investigation (*Amtsermittlungsgrundsatz*), meaning the court is responsible for investigating and establishing the facts. This type of proceeding is used primarily for disputes arising under the Works

Constitution Act (*Betriebsverfassungsgesetz* – “**BetrVG**”) and other co-determination laws.

4 Three possible instances

The German labor court system consists of three instances. The first instance is the local labor courts (*Arbeitsgerichte* – “**ArbG**”), where cases are heard by a chamber composed of one professional judge (serving as chair) and two lay judges- one representing employees and one representing employers. While legal representation is not mandatory at this level, it is highly recommended.

The second instance is the regional labor courts (*Landesarbeitsgerichte* – “**LAG**”), which handle appeals against decisions of the local labor courts. Appeals are permitted only if the local court allows it due to fundamental legal importance, if the amount in dispute exceeds EUR 600, or if the case concerns the existence or termination of an employment relationship. The chamber composition is identical to that of the first instance.

The third and final instance is the Federal Labor Court (*Bundesarbeitsgericht* – “**BAG**”), which deals solely with legal and procedural appeals against judgments of the regional courts. New evidence cannot be introduced at this stage. The court's senates consist of three professional judges, including a chairperson, and two lay judges- one from the employee side and one from the employer side.

5 See first hearing as a chance

The proceedings before the local labor court start with a conciliation hearing, usually scheduled within six to eight weeks after the claim is filed. This hearing aims to help the parties reach an amicable settlement quickly, so it is important that all legal correspondence is checked regularly and addresses are up to date. No legal documents are exchanged before this first hearing. Judges often use this opportunity to facilitate a settlement, which ends the case immediately. In fact, more than 85% of cases are resolved by agreement within the first instance. If no settlement is reached and the conciliation

hearing fails, the court schedules a main hearing in chambers, usually three to six months later. Before this hearing, parties must submit their facts and legal arguments in writing by certain deadlines. During the main hearing, the judge again tries to encourage a settlement. If this also fails, the court issues a judgment to decide the case.

6 Observe deadlines and exclusion periods

Employees must file lawsuits challenging a dismissal within three weeks of receiving the termination notice; missing this deadline results in the dismissal being legally valid by virtue of law. Additionally, labor or collective agreements often include exclusion or forfeiture periods, which require claims – such as those for unpaid wages or vacation compensation – to be submitted to court within a specific timeframe after the employer's rejection. Of course, these deadlines and forfeiture clauses also apply to claims the employer may have against the employee.

7 Principle of publicity

Court hearings are generally open to the public, and courts are required to post a schedule of the day's hearings on a notice board within the courthouse. However, hearings are not broadcast or videotaped, and it is very uncommon for a large audience to attend these proceedings.

8 Burden of proof

Generally, each party must prove the facts supporting their arguments. The labor court decides based on the evidence presented. In exceptional cases, the burden of proof may be reversed – mainly when the opposing party is in a better position to provide the evidence – or a graduated burden of proof applies, such as when a discriminated employee only needs to provide circumstantial evidence. If a party fails to meet their burden of proof, they lose the case. Therefore, thorough preparation and legal advice are not only important but essential for handling a potential lawsuit, especially regarding proper documentation (e.g., for

delivering a notice of termination) and avoiding pitfalls – particularly in cases where the court does not apply the official investigation principle (as in resolution proceedings).

9 Duration of the proceedings

The length of labor court proceedings depends on the workload of the specific court and its location. Typically, the first conciliation hearing takes place within a few weeks after filing the lawsuit. However, the second hearing may be scheduled several months later – sometimes even more than six months – depending largely on the local court's schedule. If the case proceeds through multiple instances, the entire process can take one to two years.

10 Costs of a proceeding

In the first instance, each party bears its own attorney's fees, regardless of the outcome. This approach aims to ensure that employees – often considered economically weaker than employers – can exercise their statutory rights without fear of cost risks. Most employees have legal expense insurance covering these costs.

In the second instance, this principle no longer applies. The losing party must bear all costs of the proceedings, including its own and the opposing party's expenses, although these are limited to statutory fees. This cost risk is a significant factor contributing to the fact that the vast majority of cases (>85%) are settled by mutual agreement in the first instance.

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Dr. Christian Maron, a leading international labor and employment lawyer at Taylor Wessing Germany, has been advising global companies expanding into the German market for more than fifteen years. Alongside his dedicated team, they help businesses align their global operations with German labor and employment law, providing strategic guidance on HR matters, employment

contracts, terminations, and litigation, while ensuring compliance and risk mitigation. With deep expertise in restructuring, corporate transactions, and works constitution law, Christian and his team support smooth workforce transitions and offer strong legal protection—both in and out of court.

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