

10 Pitfalls

when engaging external staff in Germany



The parties to a (service) contract are not free in determining whether an employment contract or an independent service contract shall be established. The status of the contract is determined by mandatory case law and does not only cover employment law aspects, but also social security and tax aspects.

It is important to know, that the social security system in Germany / Europe is mainly funded by mandatory contributions by both, the employer and the employee. That is why failure to comply with these obligations in the case of misclassifications of the status is severely punished in Germany, unlike in the US or other more privately organized pension systems.

1 Risks of misclassification often underestimated

A misclassification of an independent contractor can result in significant penalties. Firstly, there is a retrospective establishment of an employment contract (including vacation benefits, sick-pay, etc.). Further, retroactive payment of social security contributions for the period not subject to the statute of limitations (4 years) have to be made. In case of intentional conduct Late Fees will accrue and the statute of limitations will be increased from 4 to 30 years. Moreover, income tax and input tax may have to be corrected retroactively. Finally, the unlawful withholding of taxes and social security contributions may constitute criminal offense with up to 5 years of imprisonment.

of the customer. However, the contractor's contribution is limited to recruiting and commissioning the freelancer.

3 No exceptions for certain job profiles or highly paid freelancers

Many companies do face a shortage of high-qualified experts, in particular in so called "MINT-Jobs", as many of them do not accept to enter into an employment contract, but rather insist of being engaged as a freelancer. The German Federal Social Court has expressly stated that such shortage does not justify a misclassification.

2 Different models of external staff assignment

In Germany, there are different models of staff assignment. Firstly, there is the so-called direct commissioning where the customer directly hires a freelancer who becomes the direct contractual partner. Secondly, there is a so-called contracting situation where the freelancer is a subcontractor of a contracting provider and the contracting provider is the direct contractual partner

4 No concrete definition of Freelancers

The German legislator has not defined the criteria of what distinguishes an independent freelancer from an employee. The distinction between employer and self-employment has to be executed on a case-by-case basis, and not on abstract terms. The case-by-case evaluation is subject to the ever-changing rule by the Social Security

Courts and auditing authorities. These have consistently tightened the rules under which an independent service contract is still possible.

5 The risks of detection of misclassifications rises – digital offensive of the audit authorities

The risk of detection of misclassification was rather low in the past due to a lack of resources on part of the authorities. Approximately 2.000 employees of the German Pension Insurance had to audit approx. 400.000 employer companies per year in Germany, i.e. each auditor had only one day per employer company on average. In 2025 the German Pension Fund has therefore introduced an AI Tool called "KIRA" to increase the probability of detection of outstanding contributions by the employers including misclassification cases. At the same time the German Customs Authorities (Hauptzollämter) were empowered by the legislator with new investigative powers and digital capabilities for employer raids. The goal of the authorities is expressly to raise the funds for the pension system also by means of audits and criminal procedures.

6 Compliance process needed

According to a 2019 ruling by the Criminal Division of the Federal Court of Justice in Germany, failure to pay social security contributions and taxes in the course of a misclassification does not constitute a criminal offense if the status was reviewed in a compliance process but an incorrect legal assessment was made. However, it is required that the legal assessment was based on valid criteria. The use of questionnaires and checklists that are incorrect or where the answers are untruthful may even increase the risk of criminal liability.

7 Who is in charge and potentially accountable

A company must define its responsible players for the compliant engagement of external staff. Typically, this is procurement with the assistance of legal and compliance departments.

8 Rules do not only impact the future but also the past

Ongoing, non-compliant use of external staff must be converted to a compliant use or terminated. However, compliance rules do not only take effect from "today". Retroactive assessment of the use of external staff is required, if social security contributions or wages, sales tax may still be outstanding. The failure to implement measures triggers the criminal liability mentioned before. Responsibility will transfer to the current management as ongoing liability even if there has been a change in management since the external staff was actually engaged.

9 Dealing with risks of unpaid contributions and taxes

If risks of misclassification have been identified a proactive approach to the authorities, ensure an appropriate review and adjustment period for the ongoing cases in consultation with the relevant Pension Insurance and Tax Authority. Otherwise, there is a very high operational risk, because cases that are detected in a direct audit by the authorities would be immediately stopped. A proactive approach also excludes or significantly reduces the risk of criminal liability and also the obligation to make additional payments of social security contributions. Filter-criteria, risk-clusters and an assessment based on samples can be agreed with the authorities as a so-called „Good-Guy-Approach“ and therefore also significantly reduce the operational effort of a respective review.

10 The contingent Workforce Compliance Management System

A Compliance Check for external staff must reflect the current criteria applied by the social security authorities and courts. The players responsible within the company for such process must be identified. There must be regular trainings of responsible staff and also a Joiner / Leaver Process established. Checklists used must be comprehensive and reflect the current criteria applied by the courts and authorities. The use of templates for compliant contracts and service descriptions may facilitate having a legally compliant paper base for assignments. Finally, a regular monitoring process for all assignments must be implemented.

Experts in freelance workers



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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.

Want to learn more?

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