PANORAMIC

LABOUR & EMPLOYMENT

Germany

LEXOLOGY

Contents

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Contributors

Germany

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LEGISLATION AND AGENCIES

Primary and secondary legislation
What are the main statutes and regulations relating to employment?

The main statute on individual employment law is the Civil Code, which forms the basis of all individual employment contracts. Certain details of the employment relationship are governed by separate statutes, for example:

- the Part-Time and Fixed-Term Employment Act;
- the Remuneration Continuation Act, which deals with sick and holiday pay;
- the Federal Vacation Act;
- the Working Time Act;
- the Termination Protection Act; and
- the Company Pension Act.

The main non-discrimination statute is the General Equal Treatment Act. Relevant collective employment law statutes are the Collective Bargaining Agreement Act and the Works Constitution Act (regarding works councils and their rights), as well as the Co-Determination Act and the One-Third Representation Act, both of which deal with employee co-determination in corporate governance.

Law stated - 1 February 2025

Protected employee categories
Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

The Federal Constitution provides that no one shall be discriminated against or privileged owing to gender, descent, race, language, homeland, origin, religion or political opinion and that no one shall be discriminated against owing to disability. This provision applies directly or indirectly to all employment relationships. Discrimination in employment is specifically prohibited by the General Equal Treatment Act, which prohibits direct and indirect discrimination on the grounds of racial or ethnic origin, gender, religion, belief, disability, age or sexual orientation, as well as harassment in all forms.

Different treatment may be justified by genuine and determining occupational requirements. In the case of occupational activities within churches and similar organisations, a person's religion or belief constitutes a genuine and legitimate occupational requirement concerning the organisation's ethos. Age discrimination can be detrimental to older or younger employees and is not subject to an age threshold. Different treatment on the grounds of age shall not constitute discrimination if it is objectively and reasonably justified by a legitimate aim and if the means of achieving that aim are appropriate and necessary. In particular, the Act allows the fixing of ages in company pension schemes.

Employees who have been discriminated against are entitled to compensation for financial and non-financial damage but do not acquire a right to employment. If an employee can

establish a prima facie case for discrimination, the employer bears the burden of proof that no discrimination has occurred.

Separate non-discrimination provisions apply concerning an employee's genetic characteristics and in favour of part-time and fixed-term employees as well as whistle-blowers. Also, employers are generally prohibited from differentiating in any way whatsoever among different groups of employees without sufficient reason.

Law stated - 1 February 2025

Enforcement agencies

What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

Law enforcement by government agencies plays a role only in certain areas of employment law. The most important is occupational safety and health, where jurisdiction lies with state authorities. The Federal Employment Agency has some limited enforcement powers, namely concerning temporary workers under the Temporary Employment Act. The Federal Anti-Discrimination Agency and similar state agencies support individuals in enforcing their rights under the General Equal Treatment Act.

The Federal Customs Service pursues illegal employment; that is, employment without payment of income tax and social security contributions, as well as employment of non-EU or non-European Economic Area citizens without permission to work. It is also responsible for enforcing various statutory minimum terms and conditions, such as the statutory minimum wage, and cooperates with social security providers and various other government agencies. Otherwise, employment statutes and regulations are typically enforced by individual employees, works councils or unions bringing actions in the labour courts.

Law stated - 1 February 2025

WORKER REPRESENTATION

Legal basis

Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

A works council may be established in any business that regularly employs at least five permanent employees who have reached the age of 16 and at least three of whom have reached the age of 18 and have performed six months of service. Works council establishment is voluntary. A works council is only established if at least three employees or a trade union represented in the business initiate the statutory election process.

Law stated - 1 February 2025

Powers of representatives

What are their powers?

Works councils have a variety of statutory rights to enable them to perform their statutory tasks. For this purpose, employers need to inform them comprehensively and in due time, and provide them, upon request at any time, with all necessary documents. To the extent necessary, works councils may ask employers to make knowledgeable employees available to them for fact-finding and may use external experts, subject to an agreement with the employer. Additional statutory rights exist concerning personnel as well as social and economic matters, ranging from information and consultation to full co-determination. Where the statute provides for co-determination, the employer needs the works council's consent concerning these matters.

Regarding personnel matters, the works council is entitled to be informed of any hiring, pay scale grouping or regrouping and transfer actions, and the employer must obtain the works council's consent. Within one week of being informed, the works council may withhold consent for certain reasons set out in the Works Constitution Act, namely if this measure would be in breach of the law, any collective bargaining agreement or an agreement with the works council, or if there is factual reason to assume that the measure is likely to result in the dismissal of or other detriment to employees not justified by operational or personal reasons. If the works council withholds consent, the employer needs to apply to the labour court to permit the measure. Further, the employer needs to inform and consult with the works council before giving any termination notice.

In social matters, the following issues are subject to works council consent:

- questions concerning maintaining order and the conduct of employees in the business;
- scheduling of the daily working hours (including breaks) and their allocation to individual weekdays;
- temporary reduction or extension of the usual working hours in the business (including overtime and short-time work);
- time, location and form of remuneration payments;
- vacation policies and plans;
- introduction and application of technical equipment that may be used to monitor employees' performance or conduct (eg, information and communication systems);
- workplace health and safety rules;
- form, design and administration of institutions administering employee benefits at business, company or group level (eg, a pension fund or a cafeteria);
- questions regarding the pay and benefits structure (excluding amounts);
- piecemeal pay (including amounts);
- principles regarding employee suggestion schemes;
- principles regarding group work; and
- details of remote work performed by using information and communication technology.

Usually, the employer and the works council enter into written or electronic agreements on these matters (works agreements). If the employer and the works council are unable to agree, each may call for a conciliation board to be formed with an equal number of representatives from both sides and a neutral chair to issue a ruling that will constitute a binding agreement between the employer and the works council.

Concerning economic matters, in a business that regularly employs more than 20 employees who are entitled to vote, the employer must inform the works council comprehensively and in due time and consult with it about operational changes, such as:

- closures or downsizings of businesses or material parts thereof;
- relocations of businesses or material parts thereof;
- mergers or demergers of businesses;
- fundamental changes to the organisation, purpose or facilities of businesses; or
- the introduction of fundamentally new work or production processes.

The employer and works council are required to negotiate an agreement on the implementation of an operational change, which is intended to balance the interests of the employees and the employer (the implementation agreement). If the employer and the works council cannot reach an agreement, either party may initiate the aforementioned conflict resolution procedure. In this case, however, the conciliation board may only mediate and does not have the power to impose an agreement on the employer and the works council. The works council may also be entitled to demand a social plan.

Law stated - 1 February 2025

BACKGROUND INFORMATION ON APPLICANTS

Background checks

Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

As a rule, background checks are allowed to the extent that an employer is entitled to obtain the relevant information directly from the applicant. This is usually the case if the information sought is objectively and intrinsically linked to the specific position and relevant to the work to be performed. Further restrictions result from data protection laws (eg, checking the background of an applicant by contacting their previous employers requires the applicant's consent). Employers are not entitled to obtain an applicant's criminal or credit record directly from the relevant registers. Whether they may ask the applicant to obtain and submit these records is questionable as these records are standardised and may also contain information that is not relevant to the specific position. Security checks may be conducted if the position is security-sensitive. Psychological, personality and graphological tests require the applicant's consent, whereas polygraph tests are unlawful. Background checks regarding union membership are not allowed and checks regarding political or religious affiliation are lawful only if the employer is a political or religious institution. Hiring a third party to conduct background checks is subject to additional data protection restrictions.

Law stated - 1 February 2025

Medical examinations

Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

An employer may request a medical examination only to the extent that the examination is relevant to the applicant's physical ability to perform the work and only with the applicant's consent. The consent requirement, however, is of little help to the applicant, as refusal to consent may cause the employer to reject the application. HIV tests may be required only if the work bears an increased risk of infecting others. Genetic testing of applicants is prohibited.

Law stated - 1 February 2025

Drug and alcohol testing

Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

Alcohol and drug tests may be required if an applicant, by drug- or alcohol-related misconduct, could endanger themself or others or cause substantial property damage. These tests require the applicant's consent. Refusal to consent may cause the employer to reject the application.

Law stated - 1 February 2025

HIRING OF EMPLOYEES

Preference and discrimination

Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

An employee working part-time for an indefinite period who has informed their employer in text form that they wish to increase their working hours shall be given preference for a vacant position, unless the vacant position does not correspond to the part-time employee's position, the part-time employee is less qualified than an applicant preferred by the employer or the employee's wish conflicts with similar wishes of other part-time employees or urgent operational requirements.

Employers with at least 20 employees are required to employ severely disabled persons in at least 5 per cent of the positions in their businesses. However, non-compliance with this obligation does not give a severely disabled person a right to be hired; instead, this person may be entitled to adequate compensation under non-discrimination law. The General Equal Treatment Act and the prohibition of discrimination concerning an employee's genetic characteristics also apply in a hiring context.

Law stated - 1 February 2025

Written contracts

Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

Statutory law requires only that the parts of employment contracts relating to fixed terms and post-termination non-compete covenants must be in writing to be enforceable. The written form requires the exchange of one or more hard copies with original handwritten (wet) signatures of the employer and the employee on the same hard copy. Fixed terms may alternatively be agreed upon by using qualified electronic signatures. Mandatory retirement clauses effective as of the regular retirement age require only text form, meaning they can be agreed by e-mail or other digital formats. Written or text form employment contracts have the benefit of also complying with the Documentation Act, which requires employers to provide to employees written summaries (hard copy with wet employer signature) of the essential terms of the employment relationship, including, at a minimum:

- the names and addresses of the parties;
- the employment commencement date;
- for fixed-term contracts, the termination date or the envisaged term of employment;
- the place of employment or, if an employee will be employed at more than one location, the information that the employee may be required to work at various locations or shall be free to choose the place of employment;
- a brief characterisation or description of the work to be performed;
- the term of any agreed probationary period;
- the composition and the amount of remuneration, including overtime, allowances, bonuses, special payments and all other components, each to be stated individually, as well as their due dates and the mode of payment;
- the agreed working hours, agreed breaks and rest periods, and certain additional information in the case of agreed shift work;
- if agreed, the possibility to order overtime and the conditions under which overtime may be ordered;
- the amount of annual leave;
- any entitlement to training provided by the employer;
- where applicable, the name and address of any external company pension carrier;
- the procedure to be followed by the employer and the employee when giving notice to terminate employment, which must state that the termination notice must be in writing and must include the notice periods and the three-week period for filing a termination protection claim in court; and
- a general reference to applicable collective bargaining and works agreements.

Alternatively, employers may provide summaries in text form if the document is accessible to the employee, can be printed and stored, and the employer, when providing the document, requests the employee to confirm receipt. In this case, however, the employee may still request a written summary. The employment contract should be fully signed or agreed prior to the agreed start date, regardless of the various deadlines under the Documentation Act

(first day of employment, or seven days or one month from the agreed start date). Changes to essential terms are required to be provided in writing or, subject to the conditions above, in text form on the effective date at the latest. Failure to provide an essential term to the employee or failure to do so correctly, completely, in the required form or in good time is an administrative offence that may be punished with a fine of up to €2,000.

Employment contracts with seafarers are required to be in writing and include the essential terms of employment. Internship contracts are subject to the same form requirements as employment contracts. Summaries of essential terms for interns must be provided in writing immediately following the conclusion of the internship contract or, at the latest, before the commencement of the internship.

Law stated - 1 February 2025

Fixed-term contracts

To what extent are fixed-term employment contracts permissible?

Fixed-term employment contracts are permitted if the limitation in time is justified by reasonable cause. Reasonable cause exists in particular (without limitation) if the operational need for work is only temporary, if an employee replaces another employee (eg, in the case of illness) or if the limitation is for a probationary period. There is no specific maximum duration for fixed-term contracts; however, the longer the duration, the more difficult it usually is to establish reasonable cause. The successive use of fixed-term employment contracts over many years may amount to an abuse of rights, rendering the limitation unenforceable.

Reasonable cause is not required for fixed-term employment:

- of new employees and employees whose last employment with the employer ended a very long time ago, was of an entirely different nature or was very short, for up to two years (this type of contract may be extended up to three times, subject to an overall maximum term of two years);
- by newly established businesses, unless they are established in connection with a reorganisation of existing businesses, within four years of establishment, for up to four years (this type of contract may be extended multiple times, subject to an overall maximum term of four years); and
- of employees who have reached the age of 52 as at the agreed start date and have been unemployed for at least four months immediately prior to the agreed start date, for up to five years (this type of contract may be extended multiple times, subject to an overall maximum term of five years).

To be enforceable, fixed terms must be agreed upon in writing (wet signatures) or by using qualified electronic signatures. However, mandatory retirement clauses effective as of the regular retirement age require only to be in text form.

Specific statutes govern fixed-term employment of scientific and artistic university staff and medical practitioners in further education.

Law stated - 1 February 2025

Probationary period

What is the maximum probationary period permitted by law?

The statutory maximum probationary period is six months. Collective bargaining agreements may provide for a shorter or longer maximum period. An extension is only possible if a period shorter than the applicable maximum period has initially been agreed to, only up to the applicable maximum period and only by agreement with the employee. Unless agreed otherwise, during a probationary period of no more than six months, a notice period of two weeks applies.

Agreements with apprentices and other training agreements must provide a probationary period of at least one month but no longer than four months. During the probationary period, a notice of termination with immediate effect may be given.

Law stated - 1 February 2025

Classification as contractor or employee

What are the primary factors that distinguish an independent contractor from an employee?

An employee is defined as someone who, based on a contract under private law, is obliged to work according to instructions and in a heteronomous manner in someone else's service, and a personal dependence requirement applies. The degree of personal dependence required may vary by the nature of the work to be performed. Contrary to an independent contractor, who is essentially free to determine how to organise their work and when and where to work, an employee is integrated into the employer's operational organisation and subject to the employer's instructions regarding the contents, performance, time and place of work.

In determining whether someone is an employee, all circumstances of the individual case must be taken into account. The wording of the contract is disregarded where its practical implementation shows an employment relationship. Independent contractors who are economically dependent on the employer and, comparable to employees, in need of social protection are regarded as employee-like persons to whom some employment statutes apply.

Law stated - 1 February 2025

Temporary agency staffing

Is there any legislation governing temporary staffing through recruitment agencies?

Temporary staffing through recruitment agencies is governed by the Temporary Employment Act. Recruitment agencies are required to have a government permit to operate and are subject to detailed regulation. If a recruitment agency does not have a permit, its employees will automatically become employees of the businesses for which they work, unless they declare within one month of the agreed start date that they wish to stay employed with

the recruitment agency. The maximum period that temporary staff may work for the same business is 18 months. In this context, periods during which an individual staffer previously worked for the business are fully taken into account unless they were followed by a break of more than three months. Shorter or longer maximum periods may be set out in a collective bargaining agreement applicable to the business for which the temporary staff work. If the applicable maximum period is exceeded, temporary staff will automatically become employees of the businesses for which they work, unless they declare within one month of exceeding the maximum period that they wish to stay employed with the recruitment agency. A declaration that the temporary staffer wishes to stay employed with the recruitment agency is only valid if:

- the temporary staffer submits it in person to the Federal Employment Agency;
- the Federal Employment Agency adds a note including the date of submission and verification of each employee's identity; and
- it is submitted to the recruitment agency or the business within three days of its submission to the Federal Employment Agency.

Recruitment agencies must ensure that temporary staff essentially receive the same terms and conditions of employment, including pay, as comparable employees of the business where they are placed (the equal treatment rule). Collective bargaining agreements, which apply to most recruitment agencies, may deviate from the equal treatment rule (regarding pay for the initial nine months of staffing or, subject to certain conditions, for up to 15 months). However, this exception does not apply to temporary staffers who were employees of the business (or its affiliated entities) during the six months immediately preceding the temporary staffing. While these deviating agreements are required to adequately respect the overall protection of temporary staffers, this is essentially ensured by specific protections under German statutory law. Businesses using temporary staff must allow them access to their collective employee services, such as cafeterias, nurseries and transportation. Temporary staffers must not replace employees on strike.

Law stated - 1 February 2025

FOREIGN WORKERS

Visas

Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

Short-term visas (ie, visas for periods of up to 90 days) are not subject to numerical limitations.

Residence titles in the form of intra-corporate transfer (ICT) cards are available to foreign employees transferring from a non-EU corporate entity to its German branch or a related German entity subject to the following conditions:

- The employee works in the receiving unit as manager, specialist or trainee. A manager is a person employed in a key position who primarily manages the host unit and who is primarily under the general supervision of, or receives general instructions from, the

management board or the shareholders, or equivalent persons. This position includes management of the host unit or a department or subdivision of it, supervision and control of the work of other supervisory personnel and professional and managerial staff, and the authority to recommend hirings, terminations or other personnel action. A specialist is a person who has indispensable specialist knowledge of the fields of activity, procedures or administration of the host unit, a high level of qualification and appropriate professional experience. A trainee is a person who holds a university degree, is enrolled in a trainee programme designed for professional development or advanced training in business techniques and methods, and is remunerated.

- The employee has been employed by the non-EU corporate entity or the corporate group for at least six months immediately prior to the intra-corporate transfer and will continue to be so employed during the transfer without interruption.
- The intra-corporate transfer will exceed 90 days.
- The employee submits an employment contract that is valid during the term of the intra-corporate transfer and, if necessary, an assignment letter that include details on the location, nature, remuneration and other terms and conditions of employment for the term of the intra-corporate transfer, as well as evidence that the employee may return to an establishment of the same corporate entity or the same corporate group outside the European Union following the completion of the intra-corporate transfer.
- The employee proves their professional qualification (does not apply to trainees).

ICT cards have a maximum term of three years (for managers and specialists) or one year (for trainees).

Employees from other EU or European Economic Area (EEA) countries or Switzerland do not require visas for employment in Germany.

Law stated - 1 February 2025

Spouses

Are spouses of authorised workers entitled to work?

Spouses of authorised foreign employees with certain residence titles are generally entitled to a residence permit if the employee has sufficient housing space, the spouse and the employee are at least 18 years old, and the spouse can communicate at least in basic German. The residence permit comprises permission to work to the extent that statutory law does not prohibit or restrict the work. Spouses of employees from other EU or EEA countries who are not citizens of one of these countries and live together with the employee are entitled to a residence certificate. This certificate confirms their right to work.

Law stated - 1 February 2025

General rules

What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker who does not have a right to work in the jurisdiction?

In Germany, employers may employ workers from other EU or EEA countries or Switzerland without the need for a specific residence or work permit. Workers from other foreign countries may be employed in Germany only if they have a residence title. Residence titles generally comprise permission to work unless statutory law prohibits or restricts work. Subject to certain statutory requirements, residence titles are granted to skilled employees with professional or academic education. Residence titles must usually be applied for at the relevant German embassy before entering Germany. The embassy will involve the local immigration office to the applicant's German address and, unless an exception applies, the Federal Employment Agency. Employers are required to verify that foreign workers have a residence title and that their employment is not subject to any applicable prohibition or restriction. Employers must keep a copy of the residence title in electronic or paper form for the duration of employment and must inform the local immigration office within four weeks of any early termination of employment.

Employing a foreign worker who is not entitled to work in Germany constitutes an administrative offence. The maximum fine is €500,000 for the employer and €5,000 for the employee.

Law stated - 1 February 2025

Resident labour market test
Is a labour market test required as a precursor to a short or long-term visa?

As of 1 March 2020, Germany facilitated the immigration of skilled labour. As a result, certain residence titles no longer require prior approval by the Federal Employment Agency. Where approval is still required, it is granted to skilled employees (ie, employees with the requisite professional or academic education) without a labour market test, unless the Employment Regulation provides otherwise. Approval for other employees, as a rule, still requires a labour market test. Where a labour market test is still required, it is passed where German or non-German employees with comparable status are not available for the relevant position.

Law stated - 1 February 2025

TERMS OF EMPLOYMENT

Working hours
Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

The maximum daily working time from Monday to Saturday is eight hours. It may be increased to 10 hours if an average of eight hours per day (48 hours per week) is not exceeded within a period of six months or 24 weeks. Work on Sundays and public holidays, in principle, is prohibited, subject to limited exceptions. Employees are not entitled to opt out of these restrictions.

Law stated - 1 February 2025

Overtime pay – entitlement and calculation

What categories of workers are entitled to overtime pay and how is it calculated?

Entitlement to and calculation of overtime pay are often governed by collective bargaining agreements, works agreements or individual employment contracts. Unless otherwise agreed, the employer is contractually required to provide overtime pay if it can objectively be expected based on the circumstances of the individual case. This objective expectation applies to most employees; however, it does not apply where a commission is paid in addition to the base salary, nor does it apply to employees who provide certain qualified services (eg, lawyers) or whose annual remuneration exceeds the contribution assessment ceiling in the statutory pension insurance scheme (€96,600 in 2025). Statutory law does not require overtime pay to be higher than pay for the normal hour.

Law stated - 1 February 2025

Overtime pay – contractual waiver

Can employees contractually waive the right to overtime pay?

Overtime pay governed by a collective bargaining agreement or works agreement cannot be waived just by an agreement between the employer and the employee. Where overtime pay is governed by the individual employment contract, it cannot be waived completely in advance. Provisions to that effect are unenforceable; however, the employer and the employee may agree that a certain number of overtime hours within a certain period will not be compensated separately.

Law stated - 1 February 2025

Vacation and holidays

Is there any legislation establishing the right to annual vacation and holidays?

Employees are entitled to a minimum paid vacation of 24 working days per year, based on a six-day working week, which translates into 20 working days in the case of a five-day working week. During the first six months of the employment relationship, vacation accrues at a rate of 1/12 of the annual vacation per completed month. After six months of service, employees are entitled to the full annual vacation. Severely disabled employees are entitled to five days' additional paid vacation per year (based on a five-day working week). Vacation is in addition to public holidays, the number of which varies from 10 to 13 days per year, depending on the state where the employee works. Public holidays are also paid.

Law stated - 1 February 2025

Sick leave and sick pay

Is there any legislation establishing the right to sick leave or sick pay?

Employees are not obliged to work if they are unable to do so owing to illness. They are obliged to obtain a medical certificate for any inability to work that lasts more than three calendar days; however, an employer may ask for a certificate to be obtained from the first day. Under the Remuneration Continuation Act, employees are entitled to sick pay from their employers for a period of up to six weeks for the same illness. Sick pay is available to all employees who have completed four weeks of service. The amount is essentially equal to the employee's usual remuneration but without overtime pay and certain expenses. If six weeks have expired and the employee continues to be sick, an employee who is a member of the statutory health insurance system is entitled to sick pay from their health insurance provider for a maximum period of 72 additional weeks. This sick pay amounts to 70 per cent of the employee's gross pay, but no more than 90 per cent of the employee's net pay, in each case up to the contribution assessment ceiling in the statutory health insurance system (€66,150 in 2025).

Law stated - 1 February 2025

Leave of absence

In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

There are several types of leaves of absence, the most important being maternity and parental leave.

Maternity leave commences six weeks before expected childbirth and ends eight weeks after childbirth (12 weeks in the case of multiple births, pre-term births or if a disability of the child is determined within eight weeks of birth). During maternity leave, the employee receives maternity pay from her statutory health insurance provider or the government, and the employer is required to make up the difference between maternity pay and the average net remuneration.

Parental leave may be taken if an employee lives with, cares for and educates their child. Parental leave can be taken until the child's third birthday. Up to 24 months' parental leave may be taken after the child's third birthday but before their eighth birthday. Parental leave is unpaid by the employer; however, a government benefit of up to €1,800 per month is available to the parents for a maximum period of 12 months or, if each parent takes at least two months' parental leave, 14 months. Alternatively, parents may opt for parental pay at a reduced rate for twice the period, which makes particular sense for employees working part-time. Employees are entitled to work up to 32 hours per week during parental leave.

In businesses that regularly employ more than 15 employees, nursing care leave may be taken by employees who provide home care to a close relative in need of care. The leave may be taken for up to six months per close relative and is unpaid. In businesses that regularly employ more than 25 employees, employees may take part-time family care leave, working

a minimum of 15 working hours per week. This leave may be taken for up to 24 months per close relative and includes nursing care leave.

Employees have a right to paid leave of absence if they are prevented from working for personal reasons through no fault of their own for short periods (usually no longer than a few days). Examples include major family events such as weddings, medical consultations and home care for sick close relatives. Employees who are members of the statutory health insurance system are also entitled to unpaid leave to provide home care for a sick child of up to 12 years of age if no one else in their household can provide this care. This claim is currently limited to 15 days per child and 35 days annually (30 days per child and 70 days annually for single parents). During these periods, employees are entitled to sick pay from their health insurance providers.

Law stated - 1 February 2025

Mandatory employee benefits

What employee benefits are prescribed by law?

Employees are usually insured in the social security system, which comprises statutory pension, health, nursing care, unemployment and occupational accident insurance. Employees whose pay exceeds a certain threshold (€73,800 annually in 2025) may opt out of statutory health and nursing care insurance, and enrol in private health and nursing care insurance instead. As a rule, contributions to the statutory schemes are borne in equal shares by the employer and the employee. However, childless employees over 23 years of age contribute slightly more, and employees with more than one child slightly less, to nursing care insurance, and contributions to occupational accident insurance are borne solely by the employer. Typical social security benefits are retirement pensions, disability pensions, survivors' pensions, healthcare and nursing care, as well as unemployment and short-time work benefits. Other benefits prescribed by law include paid vacation and holidays, sick pay and maternity leave.

Law stated - 1 February 2025

Part-time and fixed-term employees

Are there any special rules relating to part-time or fixed-term employees?

The main statute in this area is the Part-Time and Fixed-Term Employment Act. Part-time employees must not be treated less favourably than comparable full-time employees due to their part-time status, unless objective reasons justify different treatment. Similarly, fixed-term employees must not be treated less favourably than comparable permanent employees due to their fixed-term status, unless objective reasons justify different treatment.

Employees who have performed more than six months of service may request a permanent reduction of their working time by giving three months' notice in text form. Employers that regularly employ more than 15 employees must accept these requests to the extent that operational reasons do not require otherwise. These operational reasons exist, in particular (without limitation), if the reduction materially affects the organisation, the workflow or the safety of the employer's business, or if it results in unreasonably high costs.

Alternatively, employees who have performed more than six months of service may request a temporary reduction of their working time for a period of one to five years by giving three months' notice in text form. Employers that regularly employ more than 45 employees must accept these requests to the extent that operational reasons do not require otherwise (see above). A similar right exists during parental leave for employees with more than six months of service in businesses that regularly employ more than 15 employees. They may request a reduction to between 15 and 32 working hours per week for at least two months by giving seven weeks' notice (13 weeks if the employee wishes to work part-time between the child's third and eighth birthdays).

Specific statutory provisions apply to work on demand and job-sharing.

Pre-retirement part-time work is subject to specific requirements under a separate statute.

Law stated - 1 February 2025

Public disclosures
Must employers publish information on pay or other details about employees or the general workforce?

Under the Pay Transparency Act, an employer in Germany regularly employing more than 500 employees and required under the Commercial Code to include a management report in its financial statements must publish a report on gender and pay equality. This report must outline the measures taken, including the impact of these measures, to advance gender equality, as well as the steps taken to establish pay equality between men and women. Employers that do not take these measures must explain this in the report. Employers that are bound by, or have agreed with all of their employees that they will apply, a collective bargaining agreement on pay must publish the report every five years, covering the preceding five-year period, while other employers must do so every three years for the preceding three-year period. The report must include the average total number of employees and the average number of full-time and part-time employees, in each case broken down by gender, for the last year of the applicable five- or three-year period. Any subsequent report must show the changes in numbers versus the previous report.

Law stated - 1 February 2025

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability
To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Post-termination covenants not to compete are invalid if they have not been agreed to in writing. They are unenforceable if the employer has failed to hand over to the relevant employee a signed document (wet signature) with the covenant or has failed to agree to pay compensation of at least 50 per cent of the employee's most recent contractual remuneration for the term of the covenant, which must not exceed two years. A post-termination covenant not to compete is unenforceable to the extent that it is not justified

by the employer's legitimate business interests or makes the employee's professional advancement unreasonably difficult. If the covenant is valid but unenforceable, the employee may elect to reject or accept the covenant.

Before the termination of employment, the employer may waive the covenant not to compete in writing. The effect of this waiver is that the employee becomes immediately free to compete upon termination and that the employer's obligation to pay compensation terminates 12 months from the waiver. Consequently, if the employer waives the non-compete covenant at least 12 months before termination, no compensation will be payable.

If the employer or the employee terminates employment extraordinarily owing to a breach of contract by the other party, the covenant not to compete becomes unenforceable, and no compensation needs to be paid if the party terminating employment declares in writing within one month of the termination that it will not be bound by the covenant. The employee may also declare that they will not be bound if the employer terminates employment ordinarily unless the termination is justified by reasons relating to the employee's person or conduct, or the employer, when giving notice, agrees to pay 100 per cent of the employee's most recent contractual remuneration for the term of the covenant.

Post-termination covenants not to solicit or not to deal with customers are subject to the same rules. The same applies to post-termination covenants not to solicit employees in favour of the employee bound by the covenant, whereas these covenants are not subject to the foregoing rules and enforceable if they prohibit solicitation only in favour of the employee's new employer or any other third party. Whether the aforementioned rules apply to covenants not to solicit or not to deal with suppliers has not yet been decided by the courts.

Law stated - 1 February 2025

Post-employment payments

Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Post-employment covenants not to compete or not to solicit or deal with customers require statutory minimum compensation. They are unenforceable if the employer has failed to agree to pay compensation of at least 50 per cent of the employee's most recent contractual remuneration (base pay, variable pay and certain benefits) for the term of the covenant. They are invalid if no compensation at all has been agreed upon. If compensation has been agreed upon but does not reach the statutory minimum, the covenants are valid but cannot be enforced by the employer. Rather, the employee may elect to reject or accept the applicable covenant. If the employee accepts it, they will be entitled to the compensation that the employer has agreed to pay.

Other employment income that the employee earns or maliciously fails to earn during the term of the applicable covenant will be taken into account to the extent that the employment income, together with the agreed compensation, exceeds 110 per cent of the employee's most recent contractual remuneration (125 per cent if the applicable covenant forced the employee to relocate). The employee is obliged to inform the employer about other employment income upon request.

Law stated - 1 February 2025

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

In which circumstances may an employer be held liable for the acts or conduct of its employees?

Within the framework of a contractual relationship, an employer is liable for any negligent or wilful breach of contract caused to the other party of the contract by an employee whom it uses to perform its obligations under the contract, provided that an intrinsic factual link exists between the employee's act and the breach. The employer is not liable for any act the employee commits that is in no way linked to their duties. Regarding liability in tort concerning third parties, the employer may excuse itself by proving proper care and diligence in selecting the relevant employee. The effect, however, of this excuse is limited owing to the employer's obligation to indemnify the employee from third-party claims. This obligation depends on the degree of the employee's fault, namely where there is:

- a low degree of negligence: full indemnification;
- ordinary negligence: partial indemnification; and
- gross negligence or a wilful act: usually no indemnification.

Personal injury to employees caused by an occupational accident for which the employer or another employee is responsible is covered by occupational accident insurance. Employers are directly or indirectly liable for this damage only if they have acted wilfully or with gross negligence.

Law stated - 1 February 2025

TAXATION OF EMPLOYEES

Applicable taxes

What employment-related taxes are prescribed by law?

An employee's remuneration is subject to income tax, to the solidarity surcharge on this tax (to the extent still applicable) and, depending on the employee's religious affiliation (if any), also to church tax. Income tax, the solidarity surcharge and church tax must be withheld and paid to the tax authority by the employer but are borne by the employee. The employer must also withhold the employee's share of social security contributions and pay it, together with the employer's share, to the employee's statutory health insurance provider, which acts as a clearing centre.

Law stated - 1 February 2025

EMPLOYEE-CREATED IP AND CONFIDENTIAL BUSINESS INFORMATION

Ownership rights

Is there any legislation addressing the parties' rights with respect to employee inventions?

The Employee Invention Act governs inventions that qualify for patent or utility patent protection as well as suggestions for technical improvements (ie, other technical innovations that do not qualify for this protection). The Act distinguishes between service inventions, which result from the employee's work in the employer's business or those that significantly depend on the business's experience or work, and free inventions, which include all other employee inventions. Employees are obliged to notify the employer in text form without undue delay of any invention they have made during employment (except free inventions that obviously cannot be used in the employer's business).

Service inventions may be claimed by the employer with the effect that the employer acquires all proprietary rights to the invention. The employer is deemed to have claimed the invention if it does not waive the invention in text form within four months of proper notification.

Free inventions must be offered to the employer first, at least on a non-exclusive basis, provided that the invention can be used in the employer's business.

Employees are entitled to compensation for any service or free invention acquired by the employer and for any suggestion for technical improvement granting protection similar to an industrial property right. The compensation shall be agreed upon between the parties. In the absence of agreement, employees may apply for determination of the compensation by an arbitration board established at the German Patent and Trademark Office, and, should arbitration fail, the civil court. The Employee Invention Act cannot be deviated from to the employee's detriment by mutual agreement; however, agreements on specific inventions or suggestions for technical improvement may be entered into, following notification.

Law stated - 1 February 2025

Trade secrets and confidential information

Is there any legislation protecting trade secrets and other confidential business information?

The Trade Secrets Statute requires employees to treat their employer's trade secrets confidentially. The Statute defines trade secrets as information that:

- is not generally known or readily accessible to persons within the circles that usually deal with the kind of information in question and, thus, has commercial value;
- is subject to measures to maintain confidentiality by its lawful owner that are appropriate under the circumstances; and
- there is a legitimate interest in the confidentiality thereof.

Examples of trade secrets include technical know-how, sources of goods, territories, lists of customers and prices, inventories, and financial and credit matters. The Trade Secrets Statute prohibits the acquisition of trade secrets by unauthorised access to, or appropriation or copying of, any documents, objects, materials, substances or electronic files that are under the lawful control of the trade secret holder and that contain the trade secret or from which the trade secret can be deduced, or by any other conduct that, under the circumstances in

the individual case, is not following the principles of good faith, taking into account honest market practices. The Statute also prohibits the use and disclosure of trade secrets by anyone who acquired the trade secret unlawfully or violates an obligation limiting the use of the trade secret or a non-disclosure obligation.

The Trade Secrets Statute does not pre-empt confidentiality provisions in employment agreements, works agreements or collective bargaining agreements, which remain unaffected. For example, employment agreements may provide for the non-disclosure of confidential information that does not meet the requirements of the statutory definition of trade secrets. However, indefinite 'catch-all' clauses have been held unenforceable.

In addition, the courts have held that employees have an obligation, even in the absence of a confidentiality provision in the employment agreement, to keep their employer's trade secrets confidential. This confidentiality obligation also applies following the termination of the employment relationship to the extent that it does not unreasonably restrict the employee in their professional activities. This post-employment confidentiality obligation is to be distinguished from a post-termination covenant not to compete, which has different content and consequences.

In the event of a breach of confidentiality, the employer may demand information concerning whether and to whom the employee has disclosed trade secrets. If the employee has violated the confidentiality obligation, the employer may claim damages. Additionally, the employer may obtain an injunction against the employee enjoining future disclosures. Disclosure of trade secrets may also be punishable as a criminal offence. The maximum punishment is three years' imprisonment or a fine. If the employee acts for gain or at the time of the disclosure knows that the secret will be exploited abroad or exploits it abroad, the maximum punishment is five years' imprisonment.

Law stated - 1 February 2025

DATA PROTECTION

Rules and employer obligations

Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The processing of employee personal data in Germany is governed by:

- Regulation (EU) 2016/679, known as the General Data Protection Regulation;
- the Federal Constitution; and
- the revised Federal Data Protection Act.

The Federal Constitution guarantees the right to privacy and the right to determine who is to receive personal data. Under the General Data Protection Regulation and the Federal Data Protection Act, the employer may process personal data (ie, facts relating to a specific or at least identifiable individual) for the purposes of the employment relationship if it is necessary for the decision on whether to establish an employment relationship, for the performance or termination of the employment relationship, or compliance with information duties regarding employee representatives under statutory law, a collective bargaining agreement or a works

agreement. Employee personal data may be processed to investigate criminal offences only if:

- facts (which need to be documented) raise the suspicion that the employee committed a criminal offence in the course of the employment relationship;
- the processing is necessary for the investigation; and
- the employee's legitimate interests in the omission of processing do not prevail, in particular (without limitation) if the form and extent of the measures are not disproportionate to the cause.

Where the processing of personal data is based on the employee's consent, the assessment as to whether the consent was voluntarily provided must take into account the employee's dependency in the context of the employment relationship as well as the circumstances under which the consent was provided. Consent may be regarded as voluntary where it is legally or commercially beneficial to the employee or where the employer and the employee pursue the same interests. Consent must be provided in writing or electronically unless a different form is appropriate given the circumstances. The employer must inform the employee in text form about the purpose of the processing and the right to withdraw consent. Employee personal data may also be processed based on a collective bargaining agreement or works agreement. The processing of special categories of personal data, such as health data, is subject to additional protection.

Law stated - 1 February 2025

Privacy notices

Do employers need to provide privacy notices or similar information notices to employees and candidates?

Employers are required to provide privacy notices to employees and candidates regarding the processing of their personal data. The key contents of privacy notices are summarised below:

- the employer's identity and contact details;
- the contact details of the employer's data protection officer, if any;
- where the data is collected via a third party, the categories of personal data concerned;
- the purposes of the processing and its legal basis;
- where the processing is based on the necessity for the purposes of legitimate interests pursued by the employer or a third party, the legitimate interests;
- the recipients or categories of recipients of the personal data, if any;
- where applicable, the fact that the controller intends to transfer the personal data to a country outside the European Economic Area and applicable safeguards;
- the period for which the personal data will be stored or, if that is not possible, the criteria used to determine that period;
-

the employees' rights concerning the processing of their personal data (data portability, access, rectification, erasure, restriction of processing and objection to processing);

- where the processing is based on consent, the existence of the right to withdraw consent at any time;
- the right to lodge a complaint with a supervisory authority;
- where the data is collected from the employee or candidate, whether the provision of personal data is a statutory or contractual requirement or a requirement necessary to enter into an employment contract, as well as whether the employee or candidate is obliged to provide the personal data and of the possible consequences of failure to provide the data;
- where the data is collected via a third party, the source of the personal data and, if applicable, whether it came from publicly accessible sources; and
- the existence of automated decision-making, including profiling and, at least in these cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of the processing for the employee or candidate.

To comply with applicable deadlines, privacy notices should be provided to employees and candidates before personal data is collected from them for the first time.

Law stated - 1 February 2025

Employee data privacy rights

What data privacy rights can employees exercise against employers?

Employees have the right to obtain from the employer confirmation as to whether personal data concerning them is being processed and, where that is the case, access to the personal data, as well as certain key information about the processing, namely:

- the purposes of the processing;
- the categories of personal data concerned;
- the recipients or categories of recipients of the personal data;
- the envisaged period for which the personal data will be stored or, if not possible, the criteria used to determine that period; and
- where personal data is not collected from the employee, any available information regarding its source.

Employees may also obtain from the employer without charge a copy of their processed personal data.

Employees may require the employer to rectify without undue delay any inaccurate personal data concerning them. In certain circumstances, they may demand from the employer restriction of the processing of their personal data, namely where the accuracy of the personal data is contested by the employee. Employees may also be entitled to have their personal data deleted without undue delay. Reasons may include:

- if the personal data is no longer necessary for the purposes for which it was processed;
- if the processing is based on the employee's consent and the employee withdraws consent; or
- where the personal data has been unlawfully processed.

Employees have the right to data portability (ie, to receive the personal data that they provided to the employer in a structured, commonly used and machine-readable format) and to transmit the data to a third party, provided that the processing is based on consent or a contract with the employee and carried out by automated means.

Law stated - 1 February 2025

BUSINESS TRANSFERS

Employee protections

Is there any legislation to protect employees in the event of a business transfer?

There is no legislation to directly protect employees in the event of a share deal, as share deals affect only the ownership in the employing company and do not interfere with the employment relationships between the company and its employees. However, asset deals and similar scenarios, such as outsourcing, are subject to legislation on transfers of undertakings, which applies to undertakings and businesses or parts thereof that qualify as a stable economic entity (ie, an organised grouping of persons and assets facilitating the exercise of an economic activity that pursues a specific objective). To determine whether the conditions for the transfer of the organised economic entity are met, the courts consider all facts characterising the transaction in question, in particular (without limitation):

- the type of undertaking or business concerned;
- whether its tangible assets, such as buildings and movable property, are transferred;
- the value of its intangible assets at the time of the transfer;
- whether the majority of its employees are taken over by the new employer;
- whether its customers are transferred;
- the degree of similarity between the activities carried on before and after the transfer; and
- the period, if any, for which those activities were suspended.

If the conditions for the transfer are met, the employment relationships between the employees employed in the relevant undertaking or business or part thereof and the transferor (old employer) pass to the transferee (new employer) with all rights and obligations (including pension liabilities, as well as for past service, regardless of funding). Rights and obligations from collective bargaining agreements or works agreements continue to apply between the employees and the new employer and, as a rule, must not be modified to the employees' detriment for one year following the transfer.

Before the transfer, the old or new employer is required to notify the employees affected by the transfer in text form of:

- the date or proposed date of the transfer;
- the reasons for the transfer;
- the legal, economic and social implications of the transfer for the employees; and
- any measures envisaged concerning the employees.

Each employee is entitled to object to the transfer of their employment relationship to the new employer within one month of receipt of the notification and, if the notification is incomplete or incorrect, may also be entitled to object at a later point in time. The transfer does not in itself constitute grounds for the termination of the employment relationship by the old or new employer. Terminations for other reasons, however, shall remain unaffected.

Law stated - 1 February 2025

TERMINATION OF EMPLOYMENT

Grounds for termination

May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

In small businesses regularly employing no more than 10 employees (including temporary workers), employment may be terminated for any plausible reason. The same applies to employees with no more than six months of service. Arbitrary, extraneously motivated or discriminatory terminations are unlawful and unenforceable.

If an employer regularly employs more than 10 employees (including temporary workers) and if the relevant employee has more than six months of service, the employer may give notice to terminate only if the termination is justified by reasons relating to the employee's personal circumstances (usually beyond the employee's control) or conduct, or due to urgent operational requirements. A typical reason for termination relating to personal circumstances is illness (eg, long-term illness for more than 24 months or repeated short-term illnesses within a period of three years causing business disruption or unreasonably high sick-pay costs), provided that a medical expert confirms that future illness or illnesses are to be expected. Termination for reasons relating to the employee's conduct usually requires a breach of contract despite a prior warning relating to a similar breach. Urgent operational requirements exist where:

- the employer's actual headcount exceeds the required headcount, based on a workload analysis;
- the employee cannot be further employed in another vacant position, even after reasonable training or under modified terms and conditions; and
- the employer, in selecting the employee from among comparable employees, has sufficiently taken into account the employee's length of service, age, number of dependants and any severe disability (ie, social selection). Employees whose continued employment is required by legitimate operational interests (eg, owing to

their knowledge, abilities and performance or to ensure a well-balanced personnel structure) are excluded from social selection.

Meeting these requirements is difficult. As terminations are commonly challenged in court, employers should properly prepare any termination to have a chance to prevail or reach a reasonable settlement.

Law stated - 1 February 2025

Notice requirements

Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Written notice to terminate must be given before dismissal. This requires delivery to the employee of a hard copy document with an original handwritten (wet) signature of the employer or its properly authorised representative. The standard statutory notice period is four weeks, expiring on the 15th or the last day of a calendar month. The notice period for the employer increases to one month, expiring at the end of a calendar month, after two years of service and by one additional month each after five, eight, 10, 12, 15 and 20 years of service, up to a maximum of seven months, expiring at the end of a calendar month. Collective bargaining agreements may provide for longer or shorter notice periods and individual employment contracts for longer notice periods; however, the notice period for the employee may not be longer than that for the employer. Pay in lieu of notice is only possible by agreement with the employee. However, this type of agreement is not generally advisable for employees as social security benefits are thereby negatively affected.

Law stated - 1 February 2025

Dismissal without notice

In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

An employer may dismiss an employee with immediate effect for an important reason (extraordinary termination). This requires facts based on which the employer, taking into account all circumstances of the individual case and balancing the interests of the parties, cannot reasonably be expected to continue the employment relationship until the expiry of the notice period or the agreed-upon termination date, as applicable. These requirements are much more difficult to meet than those of a termination for cause under US or English law. Written notice to terminate must be given within two weeks of the employer becoming aware of the circumstances justifying immediate termination. Examples of reasons for extraordinary termination include:

- taking a vacation without approval;
- simulated sickness;
- serious insult or assault against the employer or fellow employees;
- sexual harassment; and

- criminal offences in employment, particularly those to the employer's detriment.

Law stated - 1 February 2025

Severance pay

Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

A statutory right to severance exists only in particular cases. In most cases, severance is negotiated between the employer and the employee in return for the employee's agreement to terminate employment, either in the context of a mutual agreement or, following the filing of a termination protection claim in the labour court, in the context of a settlement in court. By making termination difficult, German law encourages employers to enter into mutual agreements and settlements providing for severance at an early stage. Negotiated severance is usually between half and one and a half times the employee's monthly remuneration per year of service, but may be higher depending on an individual case's circumstances.

A right to severance may result from an employer's termination notice for urgent operational requirements offering the employee severance in the notice contingent upon the employee not bringing an action in court within the statutory limitation period of three weeks. Upon expiry of the notice period, the employee is then entitled to severance equal to half the monthly remuneration per year of service. This offer, however, is usually not advisable for the employer.

A right to severance may also arise in labour court proceedings. If the notice is invalid, but the employee cannot be reasonably expected to continue employment, they may apply for dissolution of the employment relationship by the labour court against payment of severance. The employer may file this type of application if facts exist based on which continued employment cannot be expected to be beneficial for the employer's business. The severance may amount to up to 12 times the monthly remuneration (or up to 15 times for employees aged 50 or older who have performed at least 15 years of service or up to 18 times for employees aged 55 or older who have performed at least 20 years of service). Monthly remuneration is defined as monetary and non-monetary earnings in the month in which the employment relationship ends, based on the employee's regular working hours.

A right to severance may also result from a social plan. In businesses that regularly employ more than 20 employees and a works council, social plans are required for certain operational changes, such as the closure of the entire business or significant parts of it. Social plans usually include detailed provisions on how severance is to be calculated. Severance calculation and amounts vary considerably across industries and from employer to employer.

Law stated - 1 February 2025

Procedure

Are there any procedural requirements for dismissing an employee?

The works council, if any, must be informed and consulted before the employer gives notice of dismissal. It has seven days to raise concerns (three days in cases of extraordinary termination). A notice to terminate that is given without prior information of, and consultation with, the works council is invalid. Information that is available but not given to the works council at this stage cannot be used by the employer to justify the termination in any labour court proceedings that may follow. If the employee is severely disabled or has been granted equivalent status, the representatives of severely disabled employees must also be informed and consulted before giving notice. Any notice given without this information or consultation is invalid.

Law stated - 1 February 2025

Employee protections

In what circumstances are employees protected from dismissal?

Severely disabled employees and employees with equivalent status may be dismissed only after prior approval by the Integration Office, which is a state agency.

The dismissal of a female employee is prohibited during pregnancy and the four-month period after childbirth if the employer, when giving notice, was aware of the pregnancy or childbirth, or if it is informed thereof within two weeks of receipt of the notice by the employee. The competent state agency may approve a termination for reasons unrelated to pregnancy or childbirth in exceptional cases. Similar protection exists for employees on parental, nursing care or family care leave.

Works council members must not be given notice during their terms of office unless reasons for extraordinary termination exist and the works council or, in lieu of it, the labour court, has approved the termination. This protection continues for one year following the termination of office, except that no works council approval is required in this case. Election committee members and candidates for works council elections enjoy similar protection during the election process and for a period of six months thereafter. Also protected during the election process are initiating employees; that is, employees who call an all-employee meeting that shall elect an election committee or who apply to the labour court to appoint an election committee. Exceptions apply if the business is closed down or if a department thereof is closed down and the works council member, election committee member, candidate or initiating employee working in the closing department cannot be employed in another department.

Employees who are taking preparatory steps to establish a works council and have notified their intent to do so by publicly certified statement are protected from termination for personal or conduct-related reasons. This protection lasts from the date of the statement until the date of the invitation to the all-employee meeting to elect an election committee, but not for longer than three months. Extraordinary termination or termination due to urgent operational requirements remains possible.

Data protection commissioners whose appointment is required by statutory law cannot be dismissed during their term of office and for one year thereafter, except in cases of extraordinary termination.

Law stated - 1 February 2025

Mass terminations and collective dismissals

Are there special rules for mass terminations or collective dismissals?

Collective dismissals often constitute operational changes, which the employer may implement only after attempting to achieve an agreement with the works council (if any). If the works council refuses to enter into an agreement (the implementation agreement), the employer needs to apply to a conciliation board and postpone the implementation of the dismissals until the board has met, to avoid employee claims for damages resulting from any premature implementation (premature implementation may be prevented by an interim injunction obtained by the works council). The process of trying to achieve an agreement may take up to six months or even longer, in exceptional cases. In the case of an operational change, the works council is usually also entitled to demand a social plan, providing, in particular, for severance to be paid to the employees to be dismissed. Failing an agreement between the employer and the works council, the conciliation board may determine the financial volume and the details of the social plan.

Before implementing a collective dismissal, the employer is obliged to inform and consult with the works council and to notify the Federal Employment Agency before it gives notice to terminate, or enters into separation agreements, within 30 calendar days to:

- more than five employees in businesses regularly employing more than 20 but fewer than 60 employees;
- at least 10 per cent of the employees or more than 25 employees in businesses regularly employing at least 60 but fewer than 500 employees; or
- at least 30 employees in businesses regularly employing at least 500 employees.

Termination notices that are to take effect before one month has passed since notification to the Federal Employment Agency may do so only with the Agency's approval. The Agency may (but rarely does) extend this period to two months in individual cases. The same applies to termination dates in separation agreements.

Law stated - 1 February 2025

Class and collective actions

Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

German law does not permit class or collective actions to be brought by employees. Employees may only assert labour and employment claims on an individual basis. Although employees could jointly file individual claims in the labour courts, this is rarely done in practice.

Law stated - 1 February 2025

Mandatory retirement age

Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

Employers are not allowed to impose, but may agree on, mandatory retirement in collective bargaining agreements, work agreements or individual agreements. These agreements may provide for mandatory retirement once an employee has reached the regular retirement age (traditionally 65, now gradually increasing to 67). Clauses to that effect require only to be in text form to be enforceable. Agreements providing for mandatory retirement at a point when the employee may claim an early retirement pension (ie before having reached the regular retirement age) are deemed to mean the regular retirement age unless the agreement was entered into or confirmed by the employee no more than three years before that point in time. Mandatory retirement ages that are lower than the regular retirement age require specific justification under the General Equal Treatment Act (eg, the mandatory retirement age of 60 for pilots and cabin crew members has been held unenforceable).

Law stated - 1 February 2025

DISPUTE RESOLUTION

Arbitration
May the parties agree to private arbitration of employment disputes?

An employer and an employee cannot submit a dispute to private arbitration. Arbitration agreements between employers and employees are invalid and unenforceable.

Law stated - 1 February 2025

Employee waiver of rights
May an employee agree to waive statutory and contractual rights to potential employment claims?

An employee cannot, in advance, waive statutory rights, or rights under collective bargaining agreements or works agreements. Even if a specific right (eg, to sick pay or vacation) has arisen under a statute, the employee is usually not entitled to waive it. However, the employee may waive statutory minimum wage claims in a court settlement and, following the termination of employment, statutory claims to compensation for unused vacation. Rights resulting from a collective bargaining agreement (eg, remuneration claims) may be waived only in a settlement approved by the parties to the collective bargaining agreement, and rights resulting from a works agreement may be waived only with the works council's consent. Rights under an individual employment contract may be waived.

Law stated - 1 February 2025

Limitation period
What are the limitation periods for bringing employment claims?

The standard limitation period for employment claims is three years; it commences upon the end of the year in which a claim arises and the creditor becomes aware, or should become aware without gross negligence, of the circumstances justifying the claim and the identity of the debtor. However, a variety of other limitation periods apply to specific claims, notably to actions in court challenging a notice to terminate or the validity of a fixed term. The limitation period for these actions is three weeks from receipt of the notice or expiry of the fixed term. Claims for compensation of financial or non-financial damage under the General Equal Treatment Act must be filed with the employer in writing within two months of the employee becoming aware of the different treatment unless otherwise provided for in a collective bargaining agreement.

Law stated - 1 February 2025

UPDATE AND TRENDS

Key developments and emerging trends

Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

A judgment of the Federal Labour Court has limited the effect of mistakes in business transfer notifications to employees. Previously, the Court had held that any legal mistake in the notification would prevent the one-month period for employees to object to the transfer of employment from starting. According to the new judgment, mistakes that are usually irrelevant to the employee's decision to object to the transfer do not stop the objection period from commencing. This judgment reduces the risk for employers that employees may object to a transfer of their employment years after the transfer has occurred.

The Federal Labour Court has indicated that it is planning to abandon its position that a deficient mass dismissal notification to the Federal Employment Agency renders the related termination notices invalid and unenforceable. Instead, the Court intends to let the Agency decide whether to object to deficient notifications. The Court has referred two sets of questions to the Court of Justice of the European Union for clarification.

Since 1 January 2025, written form requirements in various statutes (eg, for summaries of essential terms of employment, mandatory retirement clauses in employment contracts and reference letters) have been replaced with less burdensome requirements, such as text or electronic form, in certain cases subject to conditions such as employee consent. Termination notices and termination agreements still require to be in written form.

Law stated - 1 February 2025