



Employment law in Europe, the need-to-know guide This month - Germany

By **Dónall Breen** - 21 December 2017

This is part two in a series of articles exploring the employment law regime in jurisdictions where businesses may be considering moving some of their staff post-Brexit. It is intended to provide a high-level overview of the local regime, drawing out the main legal requirements to consider. This month's focus: Germany.

Verdict - As one of the industrial powerhouses of Europe, Germany is well used to dealing with employment issues. Relations between employers and employees are extensively regulated and German labour law is best referred to as “employee protection law”. There are notable key differences with the UK, such as the requirement for works councils in certain businesses and the termination procedure generally requiring more thought, planning and justification to avoid costly litigation. Nonetheless, as a fellow member of the EU, many of the fundamental employment rights will be familiar, such as annual leave entitlement, prohibition on discrimination and maternity rights.

Quick Facts

- Language - German
- Legal System - Civil Law
- Currency - Euro
- Population - 82.6 million (Berlin - 3.2m, Hamburg - 1.7m, Munich - 1.4m)

Overview - Employment Relationship

Probation periods

Probation periods must be agreed before the contract is signed. A probation period may last for up to six months. During the probation period, either party can legally terminate the contract with two weeks' notice without stating a reason. Nevertheless, the parties could also agree a longer period of notice.

Contracts of employment

A written documentation of the terms and conditions is not required by law. However, employment contract clauses are subject to strict legal and judicial review so a written documentation is recommended for reasons of legal certainty in case of a dispute.

Minimum wage requirements

The current national minimum wage for a full-time adult employee is €8.84 per hour. Exceptions can be made for interns, apprentices, employees under 18, voluntary workers and long-term unemployed people.

Registration with authorities

Employers must request certain information from employees prior to the start of employment and usually registration must happen within the first 6 weeks of work.

Taxes and employment related charges

The employer must pay approximately half of the employee's statutory pension, statutory health insurance, public unemployment insurance, public nursing care insurance and statutory accident insurance. The overall burden for social security adds up to 21.1% of an employee's gross remuneration. As the costs are shared between employer and employee, part of the cost is deducted from the gross remuneration of the employee.

Works council

Employees can choose to set up a works council in all private sector workplaces with at least five employees. Works councils provide representation for employees at the workplace and they have substantial powers – extending to an effective right of veto and co-determination on some issues. Although not formally union bodies, union members normally play a key role within them.

Overview - Termination

Termination

If the company employs less than ten people, employment can be terminated on notice (provided there is no discrimination or bad faith).

However, if the employee has been employed for more than six months and the company employs more than ten employees, the termination is more heavily regulated. In these circumstances, the employee may be terminated only for a "particular reason". The particular reasons set out in the law include the employee's personal situation (e.g. long-term sick leave), behaviour of the employee (e.g. theft or fraud to the detriment of the employer) or reasons related to the business (e.g. the employer's decision to restructure the business, which reduces the number of positions).

There is special protection against dismissal for pregnant women, women after having their child, mothers or fathers who use their right to parental leave, members of the works council, disabled people, data protection officers and apprentices.

Notice periods

Both parties must adhere to the period of notice in the employment contract or, in case they did not agree on one, the statutory period of notice. If the termination reason is "important", there is a right to terminate the contract without notice.

The statutory minimum notice for an employee depends on their length of service. It ranges from two weeks' notice for those on probation to seven months' notice for those with more than twenty years of service.

Compensation for breach of rules

In case of a termination for operational reasons, the employee is entitled by law to a compensation amounting to half of their average monthly salary for each year of service. If an employee is dismissed for personal grounds or for reasons of behaviour, such a compensation is not required by law. However, if an employee is dismissed in breach of the rules for terminations and files a complaint against unfair dismissal, the court can award compensation to the employee depending on the employee's seniority, monthly income and the degree of the employer's breach.

This article was written in conjunction with our Littler Global partners in Germany, vangard. If you require further information, please contact vangard on j.becker@vangard.de.