

German employment law update

Welcome to the **March 2024** edition of our newsletter, with a summary of the latest news and developments in German employment law.

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Case law updates

Sick note for the duration of the notice period can raise doubts: On 12 December 2023, the Federal Labour Court (Bundesarbeitsgericht – BAG) ruled that the probative value of several certificates of incapacity for work can be weakened. According to the court, this is possible if the incapacitated employee submits one or more follow-up certificates after receipt of the notice of termination that cover precisely the duration of the notice period and the employee commences new employment immediately after termination. The entitlement to continued payment of remuneration for the duration of the notice period can then be forfeited.

Private WhatsApp group is not a legal “free space”: On 24 August 2023, the Federal Labour Court decided that offensive and inhuman statements about colleagues in a private chat group consisting of seven participants require a special justification as to why employees were entitled to expect that their statements would not be passed on to third parties by any of the participants. If an employee is unable to do so, a termination based on this statement is possible.

Employers can prohibit the use of smartphones at the workplace without co-determination: On 17 October 2023, the Federal Labour Court ruled that an employer is able to implement a prohibition of the use of smartphones at the workplace without the need of co-determination with the works council. The works council claimed that such a prohibition would fall under the co-determination right pursuant to sec. 87(1) lit. 1 Works Constitution Act (Betriebsverfassungsgesetz – BetrVG) and would therefore require the works council’s consent. However, the Federal Labour Court ruled that the employer can unilaterally implement a restriction which aims at ensuring that employees perform their obligations in due form.

Legislative developments

Update to the Whistleblower Protection Act: Since 17 December 2023, the German Whistleblower Protection Act (HinSchG) also applies to companies with between 50 and 249 employees. Until this date, the internal reporting hotlines had to be set up and operated. Violations can be punished as an administrative offence with a fine of up to €20,000. For companies with more than 250 employees, the HinSchG already applied from 2 July 2023. Companies with less than 250 employees had a transitional period until 17 December 2023 to set up and operate the internal reporting offices. Companies with less than 50 employees do not all under the obligation to set up such internal reporting channel.



Act to Promote Skilled Worker Immigration: The Act to Promote Skilled Worker Immigration (Gesetz zur Weiterentwicklung der Fachkräfteeinwanderung) contains simplifications in the process of immigrating to Germany. It came partially into force on 18 November 2023, and further amendments will follow, step by step, until 1 January 2026. The innovations, which have already been in force since the end of November 2023, include in particular the lowering of the salary thresholds for the EU Blue Card in regular and bottleneck occupations and the expansion of the group of beneficiaries.

Telephone sick notes are now permanently possible for light illnesses: Since 7 December 2023, telephone sick notes are again possible in Germany if the illness occurs without severe symptoms, the employee is already known to the medical practice, and the sick note does not last longer than five days. Sick leave by telephone was already introduced temporarily during COVID-19 and will now be possible in Germany on a permanent basis.

Child care days remain on increased level: Parents with statutory health insurance are entitled to child sickness benefits for their children up to the age of 12 who also have statutory health insurance. In the pandemic years, the number of possible days of child sickness benefit per year was increased. These special rules, however, expired at the end of 2023. For the years 2024 and 2025, it has now been decided that parents can continue to claim 15 days of child sickness benefit per child, and single parents can claim 30 working days per child. The total number of annual entitlement days per parent increases to 35 working days and for single parents to a total of 70 working days per year.

Family Start Time Act is expected in 2024: Based on the EU directive on work–life balance for parents, which should have been transposed into national law already, during the course of 2024, the Family Start Time Act is finally expected to go into effect. The Act should provide for a 10-day family start time for fathers or equivalent parents without having to take annual leave or parental leave. However, the draft law is currently undergoing further coordination, in particular as the financing of the family start leave is not clear yet.

Changes on form requirements upcoming: On 11 January 2024, the Federal Ministry of Justice published the draft bill for a Fourth Bureaucracy Relief Act (BEG IV). The draft contains proposals to reduce bureaucratic hurdles including simplifications to strict form requirements in employment law by replacing written forms with electronic forms more often. The envisaged amendments would, for example, affect the Notification Act, which was amended in 2022. These amendments would also affect the form requirements in the Federal Parental Allowance and Parental Leave Act (BEEG). Applications for a reduction in working hours and their rejection, as well as the assertion of parental leave entitlements, would be replaced with text forms. The legal developments need to be monitored in this context.

Draft of German Employee Data Protection Act is expected: The Federal Ministry had planned a new Employee Data Protection Act for the last quarter of 2023, but no draft law has yet been published. Therefore, whether a draft law will be published in the course of 2024 needs to be monitored.

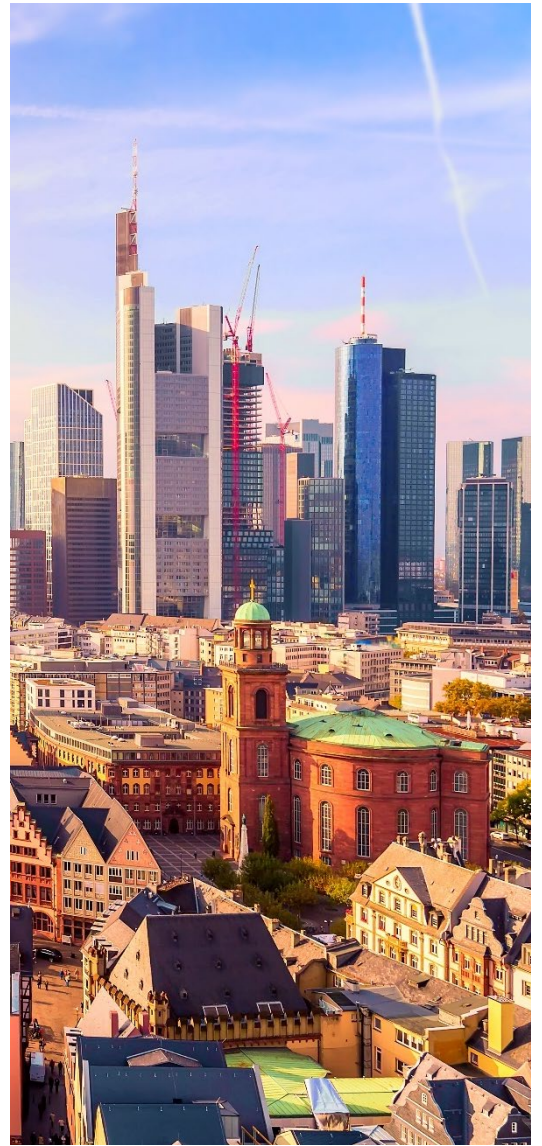
Other news

Increase of statutory minimum wage and marginal employment: Since 1 January 2024, the statutory minimum wage has increased by 41 cents to €12.41 per hour. This comes with an increase of threshold for marginal employment (so called 'minijob'): As the minimum wage and the minijob earnings limits have been linked since October 2022, with the increase in the minimum wage, the earnings limit for minijobs has also increased from €520 to €538 as of 1 January 2024. A minijob is marginal part-time employment. Marginal part-time means that there is a certain earnings limit or a certain time limit. The main difference to regular employment is the deductions that apply and the registration of the minijob employee with the so-called Minijob-Zentrale.

Inflation compensation payment option for employers: As a result of the financial impact of inflation, employers who have not yet done so can pay their employees a tax-free bonus of up to €3,000 (so called 'inflation compensation bonus'). The amount can also be paid out in several instalments. Payment is possible until 31 December 2024. It should be noted that the works council has a right of co-determination in the distribution of the bonus in accordance with sec. 87(1) lit. 10 BetrVG, provided there are no collective bargaining agreements. Employees receive the bonus gross for net. There are no additional costs for employers.

Overtime compensation clauses: Due to an increase of the relevant contribution assessment ceiling (Beitragsbemessungsgrenze) for the German Pension Insurance to €7,550 gross, employers should double-check their employment contract templates. Clauses stating that any overtime is compensated with the regular monthly salary are typically only valid if the monthly compensation is above the new contribution assessment ceiling.

Next level of applicability of the Act on Corporate Due Diligence Obligations in Supply Chains: Since 2023, the German Act on Corporate Due Diligence Obligations in Supply Chains (Supply Chain Act) (Lieferkettensorgfaltspflichtengesetz – LkSG) requires enterprises with at least 3,000 employees that have their central administration, principal place of business, administrative headquarters, statutory seat, or branch office in Germany to respect human rights by implementing defined due diligence obligations. Beginning in 2024, the Act now additionally applies to enterprises with at least 1,000 employees in Germany.



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