German Labour Law

An Overview

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Introduction

The major sources of German labour law are federal legislation, collective bargaining agreements (*Tarifverträge*), works council agreements (*Betriebsvereinbarungen*) and case law, the latter playing a key role. There is no consolidated labour code but minimum labour standards are laid down in separate acts on various labour related issues. Constitutional rights and principles also play a role in labour law, for example the principle of equal treatment (Art. 3 of the German Constitution). European Union legislation has an increasing impact on German labour law.

German labour law is divided into two subcategories, individual labour law and collective labour law. Individual labour law governs the relationship between individual employers and their individual employees. Collective labour law governs the legal relationships between employers, trade unions and employee representatives. Collective labour law aims to create uniform working conditions and includes legislation on freedom of association, collective bargaining, conciliation and arbitration, industrial disputes, employee representation and co-determination.

In the context of labour law, social security essentially means the compulsory membership of employees in social security institutions and the obligation (of employers and employees) to pay contributions to these institutions.

Individual Labour Law

Individual labour law centres on the relationship between a person at work and their employer, as governed by the employment contract between them. Both employee and employer are affected by these rights and duties. A number of different laws ensure certain minimum rights, e.g. the Law on Minimum Wages (*Mindestlohngesetz*) which obliges employers to pay a statutory minimum wage of EUR 13.90 gross per hour to employees working in Germany as of 1 January 2026. German individual labour law is entirely employee protective law, i.e. its standards can generally not be waived to the detriment of the employee, whereas contractual regulations favouring the employee compared to the statutory minimum are permissible.

Employment Contract

An employment relationship exists even without a written contract, e.g., if the employee simply starts work with the knowledge of the employer. Thus, from a strictly legal point of view, employment contracts can be concluded orally. However, it is of course advisable to set out the terms and conditions of employment in writing.

Certain types or provisions of employment contracts are subject to stricter formal requirements. Fixed-term employment contracts must be concluded in writing ("wet ink") in order to be valid. The same applies to post-contractual non-competition clauses.

Irrespective of the formal requirements for the validity of an employment contract, the employer must also provide the employee with the essential terms of the employment contract. Text form is sufficient to meet this documentation requirement. Thus, the required summary of the essential terms may be provided digitally (e.g., by e-mail) and sent to the employee electronically. However, text form is excluded by law for certain sectors, in particular the construction industry, hotels and restaurants, accommodation, logistics and transport incl. platform-based delivery services, meat industry and building cleaning. In these sectors, written form is still required.

Elements of the Employment Contract

Employment contracts generally contain the following minimum elements:

- the name and the address of the contracting parties,
- the start date of the employment relationship,
- the duration of the employment relationship in case of a fixed-term employment relationship,
- the place of work,
- a short description of the employee's tasks or position,
- the composition and the amount of the remuneration, including other benefits in kind like bonuses and supplementary grants or other elements of the remuneration and their due date,
- the working time,
- the duration of the annual vacation,
- the notice period,
- where applicable, a general reference to collective bargaining agreements, works council agreements or establishment agreements (the latter in the public sector) which are applicable to the employment relationship.

Unlimited and Fixed-Term Employment

The restrictions on limitations in time of an employment contract and the legal consequences of an invalid fixed-term contract are governed by the Act on Part-Time Work and Fixed-Term Employment (*Teilzeit- und Befristungsgesetz*). Fixed-term employment contracts come to an end automatically upon the expiry of the contractual term. During the term of the contract, a

fixed-term employment contract may be terminated with the agreed notice period if the possibility of such termination is agreed in the employment contract itself or in the applicable collective bargaining agreement. In general, a fixed-term contract of up to two years can be validly concluded, but only if the employee has not had a previous employment relationship with the employer. It is also permitted to base the fixed-term limitation (without the two-year restriction) on certain objective reasons, as defined by the Act.

Sick Leave

The rights and duties of employees who are unable to work due to illness are set forth in the Continuation of Remuneration Act (*Entgeltfortzahlungsgesetz*). Employees are obliged to inform their employer immediately of their inability to work and its probable duration. Furthermore, if the inability to work lasts longer than three calendar days, the employee must obtain a medical certificate from a doctor confirming the incapacity to work and its probable duration by the next working day at the latest. Employees can also take sick leave by telephone if they are known to the doctor's practice and have no serious illness symptoms. For employees with statutory health insurance (*gesetzliche Krankenversicherung*), employers must request their employees' medical certificates electronically from the health insurance funds (*Krankenkassen*). Medical certificates do not disclose the reason for the employee's inability to work. If necessary, the employee can release the doctor from the medical confidentiality.

Any employee who has been employed by the same employer for at least four weeks is entitled to continued remuneration in case of inability to work due to illness. For a maximum period of six weeks, the employer must continue to pay the employee's full salary.

If the employee is still unable to work due to the same sickness after the expiry of the six weeks' period, the employer's payment obligation ceases to apply. Employees with statutory health insurance are then entitled to sickness allowance (*Krankengeld*) to be paid by the statutory health fund for a period of up to 72 weeks. Whether or not an employee with a private health insurance is entitled to a similar benefit from his or her health insurance provider depends on the individual insurance policy.

Annual Leave / Vacation

According to the Federal Leave Act (*Bundesurlaubsgesetz*) a minimum statutory leave entitlement of 20 working days per calendar year must be granted, based on a five-day working week (i.e. the equivalent of four weeks). However, employment contracts in Germany usually grant additional holidays of five to ten further working days per year, thereby bringing the yearly holiday entitlement to an aggregate of 25 to 30 working days.

Severely disabled employees may be entitled to a further five days' leave per year in addition to their statutory or contractual entitlement.

(Temporary) Part-Time Work

Employees can request to work part-time for a limited period of time . The so-called "part-time bridge" (*Brückenteilzeit*) allows employees to adapt their working hours to temporary changes and demands in their lives. Previously, employees were only entitled to a permanent reduction in their working hours. Temporary part-time work gives them the opportunity to reduce their working hours for a limited period of time and then have the right to return to their initial working hours. The period of the temporary part-time must be at least one year and at most five years.

Equal Treatment

The principle of equal treatment is laid down as a fundamental right in the German Constitution. Any discrimination by public authorities against any person on grounds of sex, race, nationality, disability, religion, political opinion or trade union membership is illegal and void. This fundamental right has been adopted by case law as a basic principle of labour law, the so called "principle of equal treatment in labour law". Unjustified unequal treatment of employees is therefore illegal.

In order to fulfil the obligations arising from EU directives, the principle of non-discrimination was reinforced in 2006 by the General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz*). As a result, the employer is obliged to protect the employees against discriminatory acts, including those based on gender or age.

General Protection against Dismissal

Any employee who has been employed for more than six months in an operation (*Betrieb*) with regularly more than ten employees enjoys protection against dismissal under the Protection against Unfair Dismissal Act (*Kündigungsschutzgesetz*). For employment relationships which already existed on 31 December 2003, the Act applies if the company then employed more than five employees on a regular basis and if there still are more than five employees at the time of the termination of the employment contract.

According to the Protection Against Unfair Dismissal Act, an ordinary termination of employment by the employer is "socially justified" and therefore valid only if one of the three social justifications specified in the Act can be established and, if necessary, proven in court. The possible social justifications are:

- personal reasons (e.g. long-lasting illness),
- poor-performance or mal-conduct which, however, generally requires prior formal warnings against the employee,
- business reasons.

Employees in smaller operations or with less than six months seniority do not enjoy such protection against dismissal; but, they may enjoy special protection against dismissal. In very exceptional cases, a dismissal may be invalid because it is immoral or arbitrary (e.g. if the employee is dismissed solely because he or she is a member of a trade union).

In operations where a works council is established, the works council must be notified in advance about the intended termination (sec. 102 Works Constitution Act – *Betriebsverfassungsgesetz*). The employer must provide the works council with all relevant details about the termination and the employee concerned (in particular: age, length of service, alimony obligations, severe disability, termination date, notice period and reasons for the termination). As a general rule, the employer cannot give notice of dismissal to employees until at least one week after the works council has been duly informed. If the notification process is not duly observed, the termination is legally void if challenged by the employee before the labour court.

With one practically irrelevant exception, notice of termination of an employment contract must be in written form to be valid.

Special Protection against Dismissal

Some groups of employees enjoy special protection against dismissal, irrespective of the number of employees in the operation. For example, a notice of termination is void if it is given to

- pregnant women and mothers, including those who have experienced a miscarriage after the twelfth week of pregnancy, within four months of the birth of the child,
- employees on parental leave (the maximum period of which is three years), or
- severely disabled employees,

unless the prior approval of the competent state authorities has been obtained in each of these cases.

Works council members and spare members of the works council as well as election candidates for the works council and election committee members, may only be dismissed by extraordinary notice for cause and only with the approval of the works council. Employees who undertake preparatory actions for the establishment of a works council and have submitted a publicly certified declaration of their intention to set up a works council can also only be dismissed for good cause. The same applies to the first six employees who invite to an employees' assembly and the first three employees who apply for the appointment of an election committee. Exceptionally, a works council member can be dismissed in the event of the complete closure of an

operational unit, but only if the works council member cannot be transferred to another unit.

Notice Periods

The parties to an employment contract can agree on a certain notice period in the employment contract. This notice period must then be observed by both the employer and the employee. However, the agreed notice period must not be less than the statutory (minimum) notice periods.

In the absence of a contractually agreed notice period, the statutory notice periods apply. Mandatory statutory extensions to the notice period apply to notices given by the employer after certain periods of service. These statutory (minimum) notice periods are as follows:

1. two weeks during an agreed probationary period of up to six months;
2. four weeks to the 15th or the end of a month after the probationary period or in the absence of an agreed probationary period;
3. longer statutory notice periods, mandatory only for dismissals by the employer (with effective date to the end of a month in each case)
    - one month after two years of service,
    - two months after five years,
    - three months after eight years,
    - four months after ten years,
    - five months after twelve years,
    - six months after fifteen years, and
    - seven months after twenty years.

A collective bargaining agreement can provide for other (usually longer, but sometimes shorter) notice periods and/or other effective dates, which would then supersede the statutory and contractual notice periods. During the notice period, the salary and all contractual and statutory benefits must be paid.

In exceptional cases (e.g. theft of company property), the employer may have the right to terminate the employment relationship with immediate effect for good cause.

Court Review

There are three levels of labour courts, the Local Labour Courts (*Arbeitsgerichte*), the Regional Labour Courts (*Landesarbeitsgerichte*) and the Federal Labour Court (*Bundesarbeitsgericht*), which is the last instance.

In practice, almost every dismissed employee will file a claim with the competent Local Labour Court and challenge the validity of the dismissal. The employee must do so within three weeks after receiving the notice of termination, otherwise he or she will lose the statutory protection, especially according to the Act on the Protection against Unfair Dismissal. The Labour Courts only decide on the validity or the invalidity of the termination. The courts cannot award a severance payment which they consider reasonable to the employee who, in return, would have to accept the termination of their employment. Unless the employer can establish and prove a more or less airtight case (which is seldom the case in practice), he will usually not risk going through the normally two to three years of court litigation as in case of loss he would have to pay to the winning employee all salaries for the total time of court litigation as well as reinstate the employee. To avoid this risk, employers tend to settle claims for unfair dismissal against severance payments.

Another reason for settlements is that in the first instance, there is no obligation of cost reimbursement imposed on the losing party in labour law litigation. Thus, the employer would have to bear the costs of defending his case in court even if he won the case against the employee in the first instance.

Settlement of Disputes / Severance Payments

There are no legal guidelines as to the amount of severance which the employee can demand if the dismissal lawsuit is to be settled in court. However, the Labour Courts have developed a rule of thumb which they apply when proposing a settlement. If the employer has a good chance to prove

the validity of the termination, a severance offer of 50% of the monthly salary for each year of employment will normally be sufficient to gain an employee's consent to the termination; for older and/or long-term employees, however, the usual severance offer is 75% to 100% of the monthly salary for each year of employment.

If the employer's chances of proving the validity of the termination are weak, the employee will usually claim at least a severance of 100% of a monthly salary for each year of employment. The "monthly salary" is often calculated on the basis of 1/12 of the total annual salary including average variable remuneration and sometimes other benefits such as company car, insurance etc. While settlements are the typical outcome in practice, neither the employee nor the employer can be obliged by the court to accept a settlement.

Employee Leasing

The leasing of employees is regulated by the Employee Leasing Act (*Arbeitnehmerüberlassungsgesetz*). This Act regulates the leasing of employees as a temporary instrument to cover labour supply needs and strengthens the position of leased employees (*Leiharbeitnehmer*).

Lessors, i.e., companies wanting to hire out employees on a commercial basis (*Verleiher*), require a leasing permit (*Arbeitnehmerüberlassungserlaubnis*). The permit must be applied for at the Federal Employment Agency (*Bundesagentur für Arbeit*).

In accordance with the principles of equal treatment, leased employees are entitled to the same working and employment conditions as the employees of the hirer (*Entleiher*). After nine months of service in the company, leased employees are entitled to be paid in the same way as comparable employees of the hirer. The leasing of employees triggers information rights of the hirer's works council, which has to be informed about the leasing as such and the conditions of the leasing of employees in the operation, in particular about the duration of the lease (working days and working hours) as well as the individual leased employee's tasks and place of work.

Unless regulated otherwise in a collective bargaining agreement, the leasing of an employee is allowed for a maximum duration of 18 months only. In order to prevent circumvention of this rule, a previous leasing period is counted towards the 18-months period if the gap between the leasing periods is less than three months.

Lessors who violate the time limit risk a cancellation of their leasing permit and a fine of up to EUR 30,000. In the event of a breach of the time limit, the contract between the lessor and the leased employee becomes void. As a result, an employment relationship between the hirer and the leased employee comes into existence, unless the leased employee disagrees in written form and confirms the initial contract with the lessor within one month after the expiry of the maximum time limit in a highly formalized procedure.

According to the Works Constitution Act, certain co-determination rights of the works council depend on a minimum number of employees regularly working in the operation. With regard to these thresholds, leased employees are counted as employees of the hirer in the same way as the hirer's own employees. Leased employees also count for thresholds relevant for corporate co-determination if they have worked in the hirer's operation for more than six months.

Collective Labour Law

Collective labour law can be divided into two parts: On the one hand there is collective bargaining law, which deals with the relationship between trade unions and employers' associations or individual employers. On the other hand, there is the law on labour relations at the workplace, dealing with the relationship between an employer and the works council in individual operations. The latter is laid down in the Works Constitution Act.

Collective Bargaining Law

The right of trade unions and employers' associations to negotiate pay and employment conditions without interference from the state (i.e. their "collective bargaining autonomy") is protected by the German Constitution. The social partners are thus responsible for the pay and other agreements they reach. Pay and employment conditions for most jobs in Germany are still covered by such collective bargaining agreements. This in itself shows the importance of collective bargaining autonomy is in this country.

Collective bargaining agreements are concluded either between trade unions and employers' associations, or between trade unions and individual employers. They are the most important instruments available to the two sides for promoting their members' interests and to influence working and other economic conditions. However, an employer is not automatically entitled to apply such collectively agreed employment conditions. Collective bargaining agreements only apply

- if the employer is a member of the employers' association (or the employer is a direct party to the collective bargaining agreement) and if the employee is a member of the trade union,
- or if the collective bargaining agreement has been declared generally binding (*allgemeinverbindlich*) by the relevant public authorities.

Works Constitution Act

According to the Works Constitution Act, the employees have the right to set up a works council (although there is no legal obligation to do so). Such a works council must cooperate with the employer in a spirit of mutual trust for the benefit of both the employer and the employees. For the following thresholds, temporary agency workers must also be considered as employees of the hiring company.

Establishment of a Works Council

According to the Works Constitution Act, a works council can be set up in operations with at least five employees over the age of 16, provided that three of these employees are also over the age of 18 and have been employed in the operation for at least six months or have worked mainly for the operation as homeworkers (*Heimarbeiter*). The number of works council members depends on the number of employees in the operation, i.e. from one member up to more than 35 members in operations with more than 9,000 employees.

The works council is elected by the workforce. Legal representatives of the company such as managing directors (*Geschäftsführer*) or board members (*Vorstände*), and senior executives (*leitende Angestellte*) are not eligible to vote.

In addition, in companies with more than 100 employees on a regular basis, the works council must set up a so called "economic committee" (*Wirtschaftsausschuss*). The employer has to inform the economic committee about commercial matters, while the works council has co-determination rights mainly in relation to social, personnel and economic matters.

Responsibilities of the Works Council

The works council has substantial rights in social matters, except where statutory rules or collective bargaining agreements apply. The employer cannot make changes to these matters without the works council's consent. Of the 14 topics listed as "social matters" in sec. 87 of the Works

Constitution Act, the following are of particular important in practice:

- matters relating to the organization of the workplace and the behaviour of employees in the operation,
- the beginning and end of the daily working time (not the amount of weekly working hours),
- temporary extension or reduction of the usual working hours in the operation (e.g. the introduction of short-time work),
- the introduction and implementation of technical facilities suitable for monitoring the employees' conduct and performance,
- the establishment of basic rules concerning the nature and methods of remuneration, in particular implementation of new methods and changes thereto.

As a result of the COVID-19 pandemic and the advancing digitalization, a further social matter has recently been added to the list. The works council now has a right of co-determination in the organization of mobile work performed by means of information and communication technology.

If an agreement cannot be reached between the employer and the works council, the matter has to be brought before a so-called conciliation board (*Einigungsstelle*). This board is made up of an equal number of representatives from each side and a neutral chairperson. The decision of the conciliation board is binding on both parties.

Employers are also required by law to inform the works council about all general and individual personnel matters (such as personnel planning, manpower requirements and individual measures arising from this). In companies with more than 20 employees, the consent of the works council is required for any new hiring or for the transfer or re-grouping of employees. If the works council refuses to give its consent, the employer will have to apply to the competent Labour Court for a substitution of the works council's consent. According to sec. 102 Works Constitution Act, the employer must inform the works council of all individual dismissals. A dismissal is invalid if the works council has not been fully informed of all the relevant circumstances in due time before to the dismissal.

In companies with more than 20 employees reorganizations and other "operational changes", particularly mass dismissals of employees, trigger co-determination rights of the works council. In such cases, the employer and the works council must negotiate a reconciliation of interests (*Interessenausgleich*) and must conclude a social plan (*Sozialplan*). The reconciliation of interests defines why, when and how the reorganization will be carried out , while the social plan provides for measures to compensate for the hardship suffer by the employees affected by the reorganization (e.g. severance payments, reimbursements for moving expenses etc.). The employer must not implement the operational changes until it has reached an agreement with the works council on the reconciliation of interests or until the negotiations on the reconciliation of interests have finally failed. The conclusion of a social plan can be enforced by the works council. The employer should be aware that it can take up to four months (in normal cases) to finalize the negotiations. However, there is no statutory time limit.

In addition, the works council has some statutory responsibilities, such as monitoring the company's compliance with statutory labour law requirements and dealing with individual complaints. In order to carry out these responsibilities, the works council must be informed in advance and in (due) time by the employer of all relevant actions which the employer intends to take. In this context, the works council also has the right to review the relevant documents.

Costs of the Works Council's Activities

The members of the works council carry out their duties without receiving any additional remuneration. However, the works council members are entitled to be released from their normal work duties under the employment contract when they have to carry out their works council duties.

Additionally, the employer is obliged under the Works Constitution Act to bear all the costs

necessary for the proper fulfilment of the works council's tasks and to reimburse the works council and its members for all necessary expenses. The costs of the works council's activities to be borne or reimbursed by the employer include the following:

- premises, office staff, materials (desk, paper, pens, computer, telephone, photocopier, printed legislation, technical literature) for meetings, consultations and day-to-day administration;
- training courses (provided by trade unions or independent organizers) to provide appropriate training for works council members and spare members; the costs of training, travel, accommodation and subsistence costs must be covered;
- legal costs incurred in clarifying difficult issues of collective labour law and/or in the event that the works council has to go to court to enforce its rights under the Works Constitution Act. This applies even if the employer is the opposing party in the proceedings and even if the works council loses the case.

All costs and expenses that are objectively necessary to enable the works council to carry out its duties properly must be reimbursed. The costs must be reasonable in relation to the importance of the task.

Time off Work for Works Council Members

Only in operations with 200 or more employeers are works council members entirely released from their duty to work. In operations with between 200 to 500 employees one member is released from duty and in larger operations the number of members to be released increases. The members to be released are chosen by the works council in consultation with the employer.

If the operation has less than 200 employees, no works council member needs to be entirely released from work. In this case the works council members are required to continue performing their working duties. However, they must be released without any reduction in pay to the extent that their works council duties require. For example, time off must be given for

- attending works council meetings and works assemblies,
- consultations (usually during working hours),
- attending meetings of the joint works council (*Gesamtbetriebsrat*), the group works council (*Konzernbetriebsrat*) or the economic committee, and
- training, both initial (i.e. at the beginning of the term of office) and continuing (throughout the term of office).

The works council itself decides which member(s) should be assigned to which tasks. The respective works council member is required to take leave of absence from their workplace and sign on again after the works council-related task has been completed. However, the works council member is not obliged to tell the employer which works council-related task they will be carrying out during their leave.

The employer's obligation to release works council members from work is not limited to allowing them to leave their posts. The employer must also reduce the works council members' workload accordingly.

As works council members must not suffer any financial disadvantage as a result of being released from work, they are still entitled to their contractual remuneration. This includes gratuities, bonuses, general salary increases etc. Works council members should also not be disadvantaged in their career progression as a result of being fully or partially released from work.

If works council activities need to be performed outside working hours, the works council member is entitled to a subsequent release from work under continued payment of remuneration within one month. If such a release is not possible for operational reasons, the works council member is entitled to receive overtime pay for the time dedicated to the works council activities.

The German Social Security System

For historical reasons, social security in Germany is organized in relation to employment. In general, both the employee and the employer have to pay an equal share of the social security contributions, which are calculated on the basis of the employee's gross salary. As a rule of thumb, the aggregate social security costs currently amount to 40% of the employee's gross salary. This means that the employer's overall costs with regard to the employment relationship will, all in all, amount to approx. 120% of the employee's gross salary.

Membership of the statutory social security system is compulsory. An exception is health and nursing care insurance, where employees with a higher income (currently EUR 77.400 per year) can opt out of the statutory system in order to be privately insured.

German social security currently consists of the following five branches:

- **Statutory Accident Insurance (*Gesetzliche* Unfallversicherung),**
- **Statutory Pension Insurance (*Gesetzliche* Rentenversicherung),**
- **Statutory Unemployment Insurance (*Gesetzliche Arbeitslosenversicherung*),**
- **Statutory Health Insurance (*Gesetzliche Krankenversicherung*), and**
- **Statutory Nursing Care Insurance (*Gesetzliche Pflegeversicherung*).**

Statutory Accident Insurance

Statutory Accident Insurance has a special status insofar as it is the only statutory insurance where the employer has to bear the entire contributions. Statutory Accident Insurance is currently provided by nine industrial Accident Prevention & Insurance Associations (*Berufsgenossenschaften*) which are established by the different branches of industry. The amount of the employer's contribution is calculated on the basis of a risk calculation system (*Gefahrenklasse*), taking into account the annual salary of the entire workforce.

Statutory Pension Insurance and Statutory Unemployment Insurance

The Statutory Pension Insurance and the Statutory Unemployment Insurance are provided by various federal and state authorities. In practice, the employer generally deals with the Statutory Health Insurance only insofar as it collects the aggregate contributions for the Statutory Health Insurance, Unemployment Insurance, Pension Insurance and Nursing Care Insurance.

Contributions to the Statutory Unemployment Insurance and to the Statutory Pension Insurance are calculated according to fixed contribution rates based on the individual employee's gross salary. The contribution rates are subject to change. Currently, the contribution rates for the Statutory Pension Insurance amount to 18.6% of the employee's gross salary and for the Statutory Unemployment Insurance to 2.6% of the employee's gross salary. The calculation basis, i.e. the gross salary, is - for the purpose of the calculation of the social security contributions - limited by so-called statutory contribution ceilings (*Beitragsbemessungsgrenzen*). The statutory contribution ceiling for 2026 is EUR 101.400, both for the Statutory Unemployment Insurance and the Statutory Pension Insurance. This contribution ceiling is adjusted on a yearly basis. Any salary exceeding the contribution ceiling will not be considered for the calculation of the social security contributions.

In principle, contributions are paid equally by the employer and the employee. The employee's part of the contribution is deducted from his or her gross salary.

Statutory Health Insurance and Statutory Nursing Care Insurance

The Statutory Health Insurance and the Statutory Nursing Care Insurance work almost alike. However, there are some significant differences:

- The contribution rates for the Statutory Nursing Care Insurance amount to 3.6% (for employees with at least one child) and to 4.2% (for employees without children) of the employee's gross salary. Parents with more than one child benefit from reduced contributions. In case of Statutory Health Insurance, the general contribution rate is 14.6% of the employee's gross salary. The supplementary contributions are defined by each individual health insurance provider, with an average rate of 2.9%.
- The statutory contribution ceilings for the Statutory Health Insurance and the Statutory Nursing Care Insurance are lower than in the Statutory Unemployment Insurance and Pension Insurance. In 2026, they amount to an annual gross salary of EUR 69.750.

Employees whose annual gross salary exceeds the amount of EUR 77,400 (for 2026) may - contrary to the other branches of the social security system - replace their insurance in the Statutory Health and Nursing Care Insurance with a private health and nursing care insurance. If an employee chooses a private health insurance, the employer is still obliged to pay half of the contribution. This is however limited to half of the average contribution rate of all statutory insurance companies.

Handling

As a rule, it is the employer who organizes the entire framework of the employee's coverage in the statutory social security system. To this end, employers have to collaborate with the individual health insurance funds, which collect the aggregate social security contributions (with the exception of the contributions to the Statutory Accident Insurance which have to be paid to the competent Accident Prevention & Insurance Association directly).

Health and Safety at Work

The law obliges employers in Germany to protect their employees from dangers arising at work. German law establishes a system of rules and regulations to protect the employees' health and safety at work. These rules and regulations include both technical protection rules and social protection rules.

Rules on social protection include inter alia working time regulations and regulations protecting special groups of employees such as young people, pregnant women and severely disabled people. Rules on technical protection particularly deal with the safety of machinery, devices and work places as well as the ergonomic design of the workplace.

As in other EU countries most of the newer regulations is derived from EU directives. While this leads to a number of similarities in the relevant legislation in different EU countries, there are differences in the laws of the Member States, depending on how exactly a directive was transformed into national law. There are also differences between the laws of the Member States in terms of sanctions and enforcement.

Technical Protection

It is characteristic of the technical rules that they are partly enacted by the legislator and partly by the Accident Prevention & Insurance Associations. The difference is important, because a violation of the rules issued by the legislator will result in other (usually more severe) fines and penalties.

Rules Enacted by the Legislator

Employee Protection Act (Arbeitsschutzgesetz)

The Act sets out the fundamental duties of the employer and the employees regarding health protection. It requires the employer to assess the hazards of the workplace, to take the appropriate preventive measures and to instruct the employees in these measures. The employer must take precautions for particularly dangerous workplaces (warning and information signs, etc.) and situations (e.g. first aid, fire-fighting, evacuation, etc.). The employer must also provide preventive occupational health care.

In connection with the Employee Protection Act, the German government has issued numerous regulations, thereby transforming various EU directives into German law. One of the most practically relevant is the Workplaces Regulation (*Arbeitsstätten-VO*), which specifies how factories, workshops, offices, warehouses and shops must be laid out and equipped in terms of dimensions, walls, ceilings, roofs, windows, doors and gates, ventilation, heating, (day-)lighting, temperature, noise, clean air conditions, traffic and transportation routes, safety exits etc. It furthermore defines and establishes standards for teleworking jobs. The regulation does not apply to mere mobile working, e.g. the use of a laptop or mobile phone during a train journey. However, the Statutory Accident Insurance coverage for employees working from home has now been expressly adapted by law to that of employees in the business premises.

There are a number of other regulations, for example on health and safety on construction sites, the safety of equipment and machinery, hazardous substances, biological agents etc. These regulations will as a rule be applicable to manufacturing undertakings rather than to warehouses or office buildings.

Safety at Work Act (Arbeitssicherheitsgesetz)

This Act places employers under a duty to appoint and train appropriately qualified officers (external or internal) to support them in

occupational health and safety matters, including ergonomic workplace design. The duties of the occupational health and safety officer include advising the employer on the full range of health and safety factors in the working environment. This begins with the planning of operating facilities and the purchasing of equipment and extends to advising employers in the assessment of working conditions.

Furthermore, the Act obliges certain employers to provide for company doctors. Whether or not a company must have a company doctor depends on the specific accident and health risks in the company which are determined by the scope of activities performed by the employees, by the size of the company and by the number of employees. There is no specific definition in statutory law as to which industries are accident-prone and how many employees must be employed to trigger the requirement of a company doctor. However, if the exposure to accident and health risks is high, even a company with a small number of employees can be obliged to provide for a company doctor.

Rules Enacted by the Accident Prevention and Insurance Associations

According to German statutory law, the prime responsibility of the Accident Prevention & Insurance Associations is to prevent work-related accidents and diseases and to eliminate all work-related health hazards. In case of a work accident or work-related illness, employees must turn to the competent Association to get indemnification and/or support. In general, both the employer and the employee's colleagues are fully released from any liability for work accidents and work-related diseases. There are two exceptions to this rule:

- In case of an intentional breach of his statutory obligations regarding the prevention of work accidents, the employer is fully liable to the employees or their dependants suffering from the accident at the workplace.
- In case of an intentional breach of such duties or a grossly negligent omission to fulfil such duties, the Accident Prevention & Insurance Association may take action against the employer.

In order to provide for appropriate accident prevention, German statutory law authorizes the Accident Prevention & Insurance Associations to issue regulations and codes for the prevention and avoidance of occupational accidents and diseases. These Accident Prevention Rules (*Unfallverhütungsvorschriften*) are legally binding on their members (i.e. the employing companies) and for the insured employees.

The Accident Prevention Rules mainly contain measures to be taken by the employer to prevent occupational accidents and specific regulations for work equipment and machinery. Such measures and regulations vary according to industry concerned.

Technical Standards

Both statutory law and the Accident Prevention Rules often use very general and undefined terms (e.g. "state-of-the-art" or "generally accepted technical rules"). These general terms have been substantiated by a series of technical standards, for example by the DIN standards issued by the German Institute for Standards (*Deutsches Institut für Normung*). These standards are generally not legally binding. However, as experts or courts tend to refer to them in order to substantiate the general legal terms, they must be considered as binding in practice.

Enforcement and Consequences of non-compliance

Compliance with the legislature's employee protection laws is monitored by various governmental and public authorities and institutions, such as the Labour Inspectorate (*Gewerbeaufsicht*) and the Technical Inspection Authority (*Technischer Überwachungsverein*). The law enforcement authorities are provided with wide-ranging enforcement powers including the right to enter the company's premises, to search for documents and to examine the work equipment and the personal safety equipment. As a general rule, these authorities have the power to impose fines of up EUR 30,000 for breaches of worker protection legislation.

Compliance with the safety regulations issued by the Accident Prevention & Insurance Associations is monitored by the Associations themselves. They are authorized to impose fines of up to EUR 10,000 for non-compliance with employee protection regulations.

Social Labour Protection

Working Time Legislation

The legal working time protection as regulated in the Working Time Act (*Arbeitszeitgesetz*) stipulates that the regular number of working hours per day must not exceed eight hours. The working time can be increased to a maximum of ten hours per day provided that the overtime is compensated for and balanced out to result in an average of eight hours per day within six calendar months or 24 weeks. This allows for some flexibility in individual working time models.

The Working Time Act also provides for minimum breaks during working hours and minimum rest periods after work to protect the health and safety of employees. Special protection is provided for night workers. There is a general ban on working on Sundays and public holidays, with exceptions set out in the law.

On-call duty performed at a place determined by the employer (*Bereitschaftsdienst*) constitutes working time in its entirety, even if the employee is allowed to rest at his or her place of work when his or her services are not required.

Regulations for Groups of Employees Requiring Special Protection

Adolescents

The Young Persons' Protection in Employment Act (*Jugendarbeitsschutzgesetz*) prohibits the employment of people under the age of 15. The Act also provides for special protection of employees aged between 15 and 18. It provides, e.g., for reduced working hours in certain circumstances and lists a number of restrictions and prohibitions on the assignment of certain tasks to such young employees.

Mothers and mothers-to-be

The Maternity Protection Act (*Mutterschutzgesetz*) specifically prohibits the assigning of certain jobs to pregnant women in order to protect them from excessive physical strain or exposure. Mothers-to-be may not be assigned to work that could endanger the life or health of the mother or child. Likewise, pregnant women may request to be released from work during the last six weeks before the expected date of delivery. Mothers must not be employed for eight weeks after the delivery. During pregnancy and for the first four months after childbirth, a woman enjoys special protection against dismissal.

Women who experience a stillbirth or a miscarriage from the 13th week of pregnancy onwards are entitled to a recovery period under the statutory maternity protection provisions. The duration of this protection period is determined by the point at which the pregnancy ends. In these cases, the special protection against dismissal also applies.

Parental leavers

Under the Parental Allowance and Parental Leave Act (*Bundeselterngeld- und Elternzeitgesetz*), fathers and mothers may apply for unpaid leave for up to three years (with a - more or less theoretical - job guarantee).

Severely disabled people

Severely disabled employees enjoy special protection against dismissal pursuant to Social Code IX (*Neuntes Sozialgesetzbuch*). The dismissal of a severely disabled employee must be approved by a special public authority, the so-called Integration Office (*Integrationsamt*). The Social Code IX further provides for the establishment of a representative body for severely disabled people in the operation. In addition, severely disabled employees are granted additional leave of up to five days per year.

Company Pension Schemes in Germany

There is no general obligation under German law for an employer to provide for an employer-financed company pension scheme. However, if an employee wishes to convert part of his or her salary into future pension rights (so-called salary conversion - *Entgeltumwandlung*), the employer must, within certain limits, provide a pension vehicle for this salary conversion.

The majority of existing pension schemes in Germany are defined benefit plans. Defined contribution plans have only been allowed since 2018. However, there was and still is a hybrid between a defined contribution plan and a defined benefit plan, where the employer pays contributions to an external pension provider, but remains indirectly liable if the external pension provider does not pay the owed pension benefits to the beneficiaries.

German law currently recognises five different types of occupational pension scheme, namely direct pension schemes (*Direktzusagen*), support funds (*Unterstützungskassen*), pension fund companies (*Pensionskassen*), direct insurances (*Direktversicherungen*) and pension funds (*Pensionsfonds*).

Direct pension schemes

When an employer makes a direct pension commitment to an employee, the employer himself is directly liable for the pension obligations that typically arise upon the employee's retirement, death or invalidity. This means that the employee's pension claim is immediately directed against the employer.

Employers who make a direct pension promise must set up book reserves for pension obligations arising from direct pension promises and are obliged to participate in the Insolvency Fund for Old-Age Pension Schemes (*Pensions-Sicherungs-Verein*) to which the employer must pay contributions.

Direct pension promises do not qualify as an externally funded pension scheme under the International Accounting Standards ("IAS") and US Generally Accepted Accounting Principles ("US GAAP") either.

Support Funds

When operating the company pension scheme by means of a support fund, the employer enables the employees to participate in a support fund's scheme. Upon the employee's retirement, death or invalidity, the support fund will grant benefits to the employee or their dependants, respectively. A support fund is an independent legal entity in the form of a registered society, an incorporated foundation or a (German) private limited company. Although statute does not provide for an employee's claim against the support fund, case law has given employees such a claim in practice. Moreover, the employer remains indirectly liable for the benefits. Again the scheme does not qualify as an externally funded pension scheme under the IAS and US GAAP rules.

Pension Fund Companies

When operating the company pension scheme through a pension fund company it will be the pension fund company which grants the benefits to the employee or their dependants in case of retirement, death or invalidity. A pension fund company is an independent legal entity in the form of a mutual insurance association (*Versicherungsverein auf Gegenseitigkeit*) or a public limited company. Pension fund companies are subject to German insurance supervision law, which in particular means that pension fund companies may only make risk-free investments. Some pension fund companies, which are not covered by a security fund under insurance supervision or which are not established by collective bargaining agreement, are subject to insolvency protection by the Insolvency Fund for Old-

Age Pension Schemes, but the contribution rates are reduced in comparison to those for direct pension promises or support fund schemes. The employees have a direct claim against the pension fund company whilst the employer remains indirectly liable for the benefits. The scheme qualifies as an externally funded pension scheme under IAS and US GAAP.

Direct Insurances

When granting a company pension by way of a direct insurance, the employer takes out a life insurance policy for the employee. The employee is the beneficiary of the policy and has a direct claim against the insurance company. Again, the employer remains indirectly liable for the benefits.

Pension Funds

A pension fund is a public limited company or a mutual pension fund association (*Pensionsfondsverein auf Gegenseitigkeit*) which is legally independent from the employer. Employees have a direct claim against the pension fund whilst the employer remains indirectly liable for benefits. Pension funds have a greater freedom in the investment of assets than pension fund societies or direct insurances. Although an employer offering participation in a pension fund must contribute to the Insolvency Fund for Old-Age Pension Schemes, the contribution rates are reduced in comparison to those for direct pension promises or support fund schemes. A pension fund is also considered an externally funded pension scheme under IAS and US GAAP.

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