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New obligations for working conditions now in effect – what do employers need to know?

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Introduction

The government has been publishing new legislation on a regular basis in order to fulfil its promise to modernise labour law. The Federal Ministry of Labour and Social Affairs' draft bill, dated 8 April 2022, came into force in Germany on 1 August 2022 and implemented EU Directive 2019/1152 of 31 July 2019. This amended the Act on the Notification of Conditions Governing the Employment Relationship (the Act) in order to align with the Directive's aims to make working conditions more transparent and predictable for employees.

The Directive stipulates that employment contracts and the most important working conditions must be recorded in a written document that is handed to the employee. Working conditions are also changing significantly as a result of its implementation.

The draft bill aims to ensure greater legal certainty in employment relationship. The expansion of legal certainty is achieved by extending the employers' existing obligations to provide information on essential terms and conditions of the employment relationship.

This article is the first in a two-part series. The first part provides an overview of the draft bill and the second looks at its advantages and disadvantages.

Written records of contractual information

Section 2 of the draft bill currently stipulates that employees must receive written information regarding their employment if it does appear in their contract or where there is no written contract. Such a document must be signed and delivered no later than one month after the employment relationship begins.

This should clarify the essential terms and conditions of employment where there is no record of these in the individual employee's contract. The draft bill, therefore, has a protective function, as employees can be at a considerable disadvantage without records of such information when disputes arrive. This should also help prevent illegal employment.

Expansion of information obligations

The expansion of the information obligations will have the following effects:

- The notification for the structure of remuneration must include and state separately:
 - remuneration for overtime;
 - bonuses;
 - premiums;
 - special payments; and
 - their due date and payment methods of the above.
- There is a new notification for the existence and duration of a probationary period.
- The notification on working time must now include and state separately:
 - regular working times;
 - agreed upon breaks and rest periods; and
 - the shift system, schedule and requirements for shift changes, if applicable.
- The information requirements must now include details regarding ordering overtime, including the relevant conditions, which much

be stated separately from the details on remuneration.

- There is a new notification for the dismissals procedure, which must include at least a template for:
 - written termination notices;
 - the notice periods; and
 - the deadline by which an employee can file an unfair dismissal lawsuit.
- In connection with company pension commitments, employers must provide information on its chosen pension provider, including the name and address. However, if the pension provider supplies the information itself, the employer will only have to provide employees with details on its internal support fund.

Employers risk a regulatory fine of up to €2,000 per violation if either the material terms of the employment agreement, the above documentation or the notifications are not provided:

- on time;
- in full;
- in the prescribed manner; or
- at all.

Shortened notification periods

For all new employment relationships concluded on or after 1 August 2022, certain material terms and conditions of the employment relationship (such as compensation and working hours) must be provided to the employee no later than on the first day of work, while other terms and conditions must be provided from seven days to one month after the first day of work.

If the employment relationship already existed prior to 1 August 2022, employees can request to be provided with written documentation of the relevant working conditions within seven days (or one month for a few less material working conditions). So far, employers had two months to respond to such requests.

If the main contractual conditions change during the employment relationship, the employer must now notify employees about any changes to the working conditions in writing no later than the day on which the change becomes effective. A simple publication that reaches

all employees (eg, a notice or a verbal notification at a meeting) is not sufficient. Previously, employers could notify the employees about the change as late as one month after the change. The obligation to notify does not apply to changes resulting from amendments to:

- statutory provisions;
- collective bargaining agreements; or
- work agreements applicable to the employment relationship.

Other updated obligations

In addition to these amendments, other laws relating to employer information obligations, such as the Employee Posting Act, will be updated. In the case of that act, additional information needs to be provided with regard to employees who are sent on assignment abroad for more than four consecutive weeks. This information must include:

- the country or countries where the work will be carried out;
- the currency in which remuneration will be paid;
- any additional remuneration or compensation; and
- details of repatriation.

The information must be provided in writing no later than the first day of work.

The planned extensions to the Act also cover section 13a of the Personnel Leasing Act. Companies that deploy temporary workers must now provide such workers who have been hired out to them for at least six months with a reasoned response to their request for the conclusion of an employment contract in text form within one month of receipt of the request. The purpose is to make it easier for temporary workers to join the workforce of the employer (ie, the hirer) by informing employees about vacancies.

The notification must also provide evidence of the end date of contracts under the Part-Time and Fixed-Term Employment Act. Difficulties are expected in cases of fixed-term contracts with flexible end dates (eg, in connection with the completion of project work). Similar to the amendment to the Personnel Leasing Act, part-time employees who have been employed for at least six months are now entitled to receive an answer to the question of permanent employment within one month from the date of their request.

In both the amendments to the Part-Time and Fixed-Term Employment Act and the Personnel Leasing Act, an unsigned email will be sufficient for the employee's request and the employer's response.

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