EMPLOYMENT AGREEMENT REVISIONS REQUIRED IN GERMANY – NEW OBLIGATIONS FOR EMPLOYERS IN RELATION TO TRANSPARENT WORKING CONDITIONS EFFECTIVE 1 AUGUST 2022

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Labor, Employment, and Workplace Safety Alert

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On 23 June 2022, the German parliament passed a bill to implement an EU directive on transparent and predictable working conditions into German law.

Changes to the German Evidence Act (Nachweisgesetz – NachwG) are of particular relevance for employers in Germany. Existing requirements to evidence certain employment conditions have been supplemented and new requirements have been added. The new requirements apply to all employment relationships which commence on or after 1 August 2022. As a consequence, all employers in Germany will need to update their template employment agreements to ensure that they include the newly required information. For employment relationships already in place before this date, employees can request that the information is provided separately.

In particular, the following requirements will apply going forward:

NEW REQUIREMENTS:

- Probationary period: To the extent agreed, the duration of the probationary period must be specified (Section 2 para. 1 sent. 2 no. 6 NachwG);
- Overtime: To the extent agreed, the possibility to request overtime work and the conditions for requesting this (Section 2 para. 1 sent. 2 no. 10 NachwG) as well as remuneration for overtime, payment due dates and the method of payment must be specified (e.g. cash payment / wire transfer) (Section 2 para. 1 sent. 2 no. 7 Na-chwG);
- Breaks and rest periods: Information relating to breaks and rest periods must be included (Section 2 para. 1 sent. 2 no. 8 NachwG);
- Shift work: To the extent agreed, the shift system, shift cycle and conditions for shift changes must be specified (Section 2 para. 1 sent. 2 no. 8 NachwG);
- On-call work: In case of on-call work, the number of hours to be remunerated as a minimum, the period during which work can be required and the time frame indicated for the performance of the work - by stating reference days and reference hours - must be specified (Section 2 para. 1 sent. 2 no. 9 NachwG);

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- Training: Indication of any entitlement to training provided by the employer (Section 2 para. 1 sent. 2 no. 12 NachwG);
- Company pension plan: In the event of commitment to a company pension scheme via a pension provider by the employer, the new requirements include disclosure of the identity of the pension provider (name and address) - the obligation to pro-vide this evidence does not apply if the pension provider is obliged itself to provide the information (Section 2 para. 1 sent. 2 no. 13 NachwG).

ADDITIONS TO ALREADY EXISTING REQUIREMENTS:

- Fixed-term employment relationships: Indication of the end date or the foreseeable duration of the employment relationship (Section 2 para. 1 sent. 2 no. 3 NachwG);
- Place of work: Indication of the place of work or, if the employee is to work at more than one specific place, indication that the employee may be employed at different places or may freely choose his place of work (Section 2 para. 1 sent. 2 no. 4 NachwG);
- Composition of remuneration: The composition and amount of the remuneration must be shown separately - in each case according to the remuneration component - and, in addition to the due date, must also mention the method of payment (e.g. cash payment / wire transfer) (Section 2 para. 1 sent. 2 no. 7 NachwG);
- Notice of termination: Not only the notice period must be indicated, but also the procedure to be followed by the employer and the employee when terminating the employment relationship - this requires at least an indication of the written form requirement and the period for bringing an action against unfair dismissal (Section 2 para. 1 sent. 2 no. 14 NachwG).

Until now, certain terms and conditions of the employment relationship had to be submitted to the employee in written form (i.e. signed by the employer with wet ink signature) no later than one month after the agreed start of the employment relationship. With the new law, this is now required - at least for certain key terms (e.g. remuneration and working hours) - on the first day of work performance. Proof in electronic form is - as before and despite some criticism -still excluded.

The safest way to comply with these new obligations is by including the relevant provisions directly in the employment agreement. Moreover, employment agreements should be concluded (by ob-serving the written form requirement) at the very latest by the time the employee starts working. In such case, the required obligations under the Evidence Act will be fulfilled directly with the employment agreement - i.e. no additional documentation will be required on top.

It is also worth mentioning that in the future, changes to the essential terms of the employment relationship must be communicated to the employee in writing as early as the day on which the changes take effect.

Employers who do not comply with the above evidence requirements will be acting in breach of the law. Fines of up to EUR 2,000 may be imposed per breach.

The new law also provides for changes in other areas. For example, new requirements must be observed for posting agreements or for temporary agency employment. There are also changes to fixed-term employment

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relationships. For example, going forward, any agreed probationary peri-od must be in reasonable proportion to the duration of the fixed-term employment and the nature of the work. Against this background, probationary periods of six months, even for short fixed-term agreements, will no longer be possible across the board. In addition, employees with fixed-term agreements will be able to communicate their wish for permanent employment - the employer must then generally provide a reasoned response to such request.

Employers should now urgently check whether their template employment agreements comply with the new requirements and implement any necessary adjustments.

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