

Driven by numbers

German employment law: a slightly different overview

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For some it might come as a surprise, but German labor and employment law is driven by numbers. From a labor- and employment-law perspective numbers create legal consequences, lead to claims and determine a company's destiny:

Practical examples: five to 20 employees

Starting with five employees in the business, a works council has to be elected (Section 1, paragraph 1 of the Works Constitution Act [*Betriebsverfassungsgesetz, BetrVG*]).

Generally, the Employment Protection Act (*Kündigungsschutzgesetz, KSchG*) applies starting with 11 employees in the business. All employees who were continuously employed for more than six months are protected against dismissal. In concrete terms, this means that only socially justified dismissals are allowed. According to Section 1, paragraph 2 of the *KSchG*, these are dismissals that are justified for a person-related, conduct-related or operational reason (such as the

loss of the need for the position through restructuring). The employer has to prove the facts justifying the dismissal (Section 1, paragraph 2, sentence 4 of the *KSchG*).

And starting with 10 employees who work on the automated processing of personal data, the company has to appoint a data protection officer (Section 4 f, paragraph 1, sentence 3 of the Federal Data Protection Act [*Bundesdatenschutzgesetz, BDSG*]). A company employing at least 10 executives has to establish an executives' committee (Section 1, paragraph 1, Act on Executives' Committee [*Sprecherausschussgesetz, SprAuG*]).

Starting with 11 employees, a company has to establish a break room (Section 4.1, paragraph 2, *ASR A 4.2*).

In a company with more than 15 employees, workers are fully or partially released from work if they are caring for close relatives in a domestic environment (Section 3, paragraph 1 of the Home Care Leave Act [*Pflegezeitgesetz, PflegeZG*]). For emergency situations, the act defines a temporary

inability to work as leave for up to a maximum period of 10 working days (Section 2, paragraph 1 of the *PflegeZG*). For long-term-care situations, the act defines a right to exemption for an up to six-month care period (Section 4, paragraph 1 of the *PflegeZG*). Starting with 16 employees, a claim to part-time work exists (Section 8, paragraph 7 of the Act on Part-Time Work and Fixed-Term Employment [*Teilzeit- und Befristungsgesetz, TzBfG*]).

A company employing up to 20 people can come to an agreement on a shorter notice period in an individual employment contract than prescribed by law. This right is limited by Section 622, paragraph 5, No. 2 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) by setting a minimal notice period of four weeks. This means that employers can come to an agreement on a four-week notice period with their staff, instead of, e.g., the statutory notice period of two months to the end of the calendar month in the case of five years of employment.



Numbers count on the road to success.

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Starting with 20 employees, a company is required to offer at least 5% of its jobs to severely disabled persons (Section 71, paragraph 1 of Volume IX of the Social Insurance Code [*Sozialgesetzbuch, SGB IX*]). Special arrangements exist for employers providing fewer than 40 or 60 jobs on average. Employers not complying with this duty are obliged to pay a countervailing charge (Section 77 of the *SGB IX*).

More than 20 and fewer than 100 employees

A company that employs more than 20 employees has to establish an industrial safety committee (Section 11 of the Occupational Safety Act, [*Arbeitssicherheitsgesetz, ASiG*]). This committee consists of the employer, two members →

of the works council, company doctors, a specialist for occupational safety and a security officer. The security officer is only appointed in companies with more than 20 employees (Section 22 of the *SGB VII*, Section 20, paragraph 1 of the Social Accident Insurance [*Gesetzlichen Unfallversicherung, DGUV 1*]).

Starting with 21 employees, a company must notify the Employment Office (Agentur für Arbeit) of any mass layoffs according to Section 17, paragraph 1 of the *KSchG*.

And starting with 21 employees who are entitled to vote, the works council in the company consists of three members. The number of members then increases: Starting with 51 workers with voting rights, it consists of five members; starting with 101 workers with voting rights, it consists of seven members, and so on (Section 9, of the *BetrVG*).

Starting with 21 employees, it is mandatory that the minority gender (typically women) is represented in the works council (Section 15, paragraph 2 of the *BetrVG*). And starting with 21 employees, the works council has to give its consent to individual personnel measures (recruitment, transfer, restructuring) according to Section 99, paragraph 1 of the *BetrVG*.

The same threshold of 21 employees and up applies to participation in a works council in cases involving operational changes. This means there is an obligation to negotiate a reconciliation of interests and a social plan (Section 111, sentence 1 of the *BetrVG*).

Starting with 26 employees, an employee caring for a close relative in a domestic environment is partly released from work duties for a maximum period of 24 months (Section 2 of the Family Care Leave Act [*Familienpflegezeitgesetz, FpFZG*]). In contrast to the aforementioned Home Care Leave Act, the Family Care Leave Act only supports the partial release through a reduction in working time.

Starting with 31 employees, the employer's health insurance benefit lapses from the pay-as-you-go system concerning wages paid for sick leave (Section 1 of the Expenditure Compensation Act [*Aufwendungsausgleichsgesetz, AAG*]).

An employer with fewer than 50 employees does not require permission for temporary employees who serve to prevent short-time work [*Kurzarbeit*] or avoid layoffs for a period up to 12 months (Section 1a, paragraph 1 of the Labor Lease Act [*Arbeitnehmerüberlassungsgesetz,*

AÜG]). Prior written notice concerning the temporary employment must be submitted to the Federal Employment Office (Section 1a, paragraph 1 sentence 1, paragraph 2 of the *AÜG*).

Starting with 60 employees, the company must notify the Employment Office about mass layoffs if 10% of the regularly employed workers or more than 25 workers are dismissed within 30 calendar days.

More than 100 employees

Starting with 101 permanently employed workers, an economic committee is required in addition to the works council (Section 106, paragraph 1 of the *BetrVG*). Management must comprehensively inform the economic committee in a timely manner about economic matters by presenting necessary documents. Such economic matters include, e.g., the company's economic, financial, production and sales situation as well as its rationalization measures and the like.

Starting with 200 employees in the business, one member of the works council is released from employment duties to handle the work of the works council. The number of exemptions increases as the number of employees increases: Starting with 501 employees, an exemption

for two members of the works council is necessary; starting with 901 employees, an exemption for three members is necessary and so on (Section 38, paragraph 1 of the *BetrVG*).

Starting with 201 employees, the works council has to form a works committee to run its day-to-day business (Section 27, paragraph 1 of the *BetrVG*). The works committee consists of the chairperson of the works council, his or her deputy and at least three other members. The number of the committee members varies depending on the size of the works council.

Starting with 301 employees, the works council may request a consultant on business costs in cases of operational change (restructuring, reorganization). Such consultants are usually economic experts or lawyers or both (Section 111, sentence 2 of the *BetrVG*).

More than 500 employees

Starting with 500 employees, a company must notify the Employment Office of dismissals of 30 workers or more (Section 17, paragraph 1 of the *KSchG*).

Starting with 501 employees, an employee representative must be appointed to →

the supervisory board for corporations that have them (Section 1, paragraph 1 of the One-Third Participation Act [*Drittelbeteiligungsgesetz, DrittelbG*]).

More than 1,000 employees

And starting with 1,000 employees, a European works council must be established for companies with at least 150 workers in two states (Section 3 of the European Works Councils Act [*Europäische Betriebsräte-Gesetz, EBRC*]). Furthermore, information on

the company's economic situation and development must be provided quarterly to the workforce for companies with 1,000 employees or more (Section 110 of the *BetrVG*).

Starting with 2,001 employees, formation of a codetermined supervisory board is mandatory according to the Codetermination Act (*MitbestG*). At least 12 board members have to sit on the board, from which half must be employee representatives (Section 1, 7 paragraph 1 of the *MitbestG*). ←



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