



OPENING UP SHOP IN GERMANY

PUSCH WAHLIG WORKPLACE LAW is a member of L&E Global, the alliance of employment counsel worldwide

When setting up a business in Germany, the relatively high standard of employee rights provided by the German labour and employment law needs to be taken into consideration. From our experience, foreign companies considering an expansion to Germany are often surprised and somewhat discouraged when they learn more about the German labour and employment law system. We are aware of the fact that it is challenging to ensure compliance with the unfamiliar legal requirements of another country. However, with the right

know-how and expert support, many difficulties can be avoided or at least moderated. Therefore, we provide a brief summary below on the essential labour and employment law as well as corporate law requirements, which aims to offer your company a first overview of the legal framework for opening up shop in Germany.

Pusch Wahlig Workplace Law is a firm of highly qualified labour and employment law specialists with offices in Berlin, Frankfurt and Düsseldorf. Our team advises companies, which operate

nationally and internationally, in all matters of collective and individual employment law. We share a passion and enthusiasm for employment law and an ongoing commitment to strive for the best possible solutions for our clients.

Regarding the corporate law portion of this summary, we co-operated with **Schnittker Möllmann Partners**, an excellent law firm specializing in tax and corporate law, with offices in Berlin, Hamburg and Cologne.

I. LABOUR AND EMPLOYMENT REQUIREMENTS

German employment law is governed by many separate laws and to a large extent by case-law. There is no unified law regulating the relationship between employer and employee, but rather separate laws for particular issues - i.e. the Federal Vacation Act (BUrlG), the Hours of Employment Act (ArbZG) or the Maternity Protection Act (MuSchG). Most provisions in German employment law require interpretation when applied to a specific case. The labour courts perform such interpretation and sometimes even establish general principles not expressly included

in statutory law. Case-law is therefore of very high importance. As German employment law mainly serves the purpose of protecting the employees, the interpretation of the labour courts is mostly employee-friendly. We have outlined the most important legal requirements to be observed when employing employees in Germany below.

A. WORKPLACE REQUIREMENTS

Employers are obliged to provide a healthy and safe workplace to their

employees. If the employer does not fulfill the rules of occupational safety, the employees are entitled to refuse to work at an unsafe workplace without losing their claim to remuneration for such time. Furthermore, employees are entitled to demand that health and safety regulations are observed in the future and may claim compensation for any damages incurred. The fulfillment of the applicable health and safety regulations are monitored by the German administrative authorities.

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B) HIRING PRACTICE

During the hiring process, the potential employer must be aware that not all questions are permissible in a job interview. In general, the potential employer may require any information relating to the applicant's qualifications necessary for the open position. However, questions concerning e.g. pregnancy or family planning, religion or severe disability are generally not allowed in a job interview. If such questions are asked, the employee is entitled to refrain from answering or offering an untruthful answer and the employer cannot base any adverse legal measures on this.

Another important aspect to be considered during the hiring process as well as during the employment is the German General Equal Treatment Act (AGG), which aims to abolish unequal and unjustified treatments of employees based on certain criteria, such as ethnic origin, gender and age. Therefore, to avoid possible discrimination issues, the employer should always base the rejection of an applicant on objective hiring criteria such as job profile and required qualifications. Applicants who are rejected based on discriminatory criteria may claim compensation in the amount of up to three monthly salaries of the position they applied for. Due to such potential discrimination claims, the employer is entitled to store personal data of the rejected applicant for 3-6 months after the end of the recruitment process. Beyond this period, personal data of the applicant may only be stored in case of the applicant's explicit permission.

C) EMPLOYMENT CONTRACTS

The general terms and conditions of employment are regulated to a large extent by statutory law, collective bargaining agreements concluded with the unions and agreements with the employee representatives at company level (works council), if in place. As a general rule, the employment contract may not deviate from these provisions to the detriment of the employee. The employer is obliged to provide the main contractual terms in writing to the employee no later than one month after the commencement of the employment. Therefore, employment contracts in written form are very common and certainly recommended. When the employment contract is pre-formulated by the employer and not negotiated with the employee clause by clause on an individual basis, the contractual provisions are subject to court review, if challenged by the employee. In particular, clauses that are considered an unreasonable disadvantage to the employee will be considered null and void.

D) WORKING CONDITIONS

Employees in Germany are entitled to a minimum of 20 working days of paid leave per calendar year, based on a five-day workweek. However, most employees are usually granted 25 to 30 days of holiday per calendar year, depending on seniority and the type of business.

The statutory maximum working time is 8 hours per day from Monday to Saturday. Working on Sundays and public holidays is generally forbidden. However,

under certain prerequisites the regular daily working time may be extended to up to 10 hours. Furthermore, an uninterrupted rest period of 11 hours after daily work must be guaranteed. The law allows for certain deviations through collective bargaining agreements.

As a general rule, remuneration is determined by mutual agreement. However, since 1 January 2015 a minimum wage is in force. It currently amounts to 8.84 EUR gross per hour and is reviewed every two years. The next possible increase of the minimum wage would take effect on 1 January 2019. The minimum wage generally applies to all employees in all sectors of business, with some exceptions, e.g. for employees under 18, trainees and interns.

Please further note that the employer is obliged to pay contributions to the social security in addition to the employee's gross salary and is responsible for deducting the income tax from the gross salary. Therefore, all employees must be registered with social security and the tax authorities. The employer must further pay contributions to the statutory accident insurance.



II. CORPORATE LAW REQUIREMENTS

German corporate law knows a variety of business forms that founders can choose from. Generally, these business forms are divided into partnerships and companies. The most popular company form in Germany is the private company with limited liability (Gesellschaft mit beschränkter Haftung – GmbH). There is also a variety of partnerships, especially including the limited partnership (Kommanditgesellschaft – KG). No other business forms than the ones provided by law can be created.

A GmbH is relatively easy to set up and offers limited liability for the shareholders. Additionally, the administration, later restructuring and the disposition of shares are comparatively straightforward. The GmbH has full legal capacity, meaning it can hold rights and

obligations and can sue and be sued in court. For tax matters, the GmbH is a taxable entity as opposed to partnerships, which are tax-transparent and where the individual partners are tax subjects. Another important difference to partnerships is that a GmbH allows for a third-party managing director of the company. A GmbH can be founded by one or more persons, regardless of whether they are domestic or foreign, natural persons or legal entities. The company formation requires a notarized conclusion of the articles of association. Governmental permissions are not necessary unless the intended activity of the GmbH itself requires regulatory approval. The articles of association need to be signed by all shareholders and include at least the following: company name and principal office, objects of the company, nominal capital

and number of shares each shareholder assumes.

A newly founded GmbH needs to be registered with the German commercial register. This is a constituent element of the formation. The registration can only be made if at least half of the required nominal capital of EUR 25,000 is provided. Mandatory registration information include: (i) the articles of association; (ii) a list of shareholders (including name, date of birth, address, and the amount of shares assumed); (iii) documentation of the appointment of managing directors; (iv) information on the power of representation. The registration with the commercial register usually takes place within one to three weeks after the application.



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III. PAYROLL AND BENEFITS PROVIDERS

Larger companies often have their own payroll accounting. However, it is also possible to outsource payroll responsibilities. We are happy to recommend payroll providers to support your company.

We are pleased to offer our services for all of the required work identified above and assist your organization to open in Germany. Any portion of the work can be conducted on the basis

of a blended rate of 300 EUR per hour in addition to any required disbursements and tax.

If you have any questions, please contact either of the following representatives:

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