

GERMAN EMPLOYMENT DOCUMENTATION LAW: 5 THINGS U.S. HR MANAGERS AND IN-HOUSE COUNSEL NEED TO KNOW

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Navigating another country's legal requirements can be challenging for HR managers and in-house counsel, but companies that operate internationally should recognize that employment law systems outside the United States are generally more regulated. For instance, many countries require formal employment contracts, whereas most U.S. employees are "at-will" and receive only an offer letter ahead of employment. In German labor law, the rules governing the employment relationship are more detailed and comprehensive, particularly concerning transparency and documentation. Here are the top five things U.S. HR managers and in-house counsel need to know about the German employment documentation law.

1. Key Provisions

A key piece of legislation in Germany is the *Nachweisgesetz* (Employment Documentation Act or NachwG), which specifies the information that must be provided to an employee in writing both at the start of and during their employment. Key provisions include the following:

- **Written Documentation:** The German Employment Documentation Act mandates written and signed documentation of essential working conditions. Employers are obligated to provide these written records within statutory deadlines and ensure they are signed and

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handed to the employee. Note: An email or PDF with the terms is not sufficient under this law.

- **Fines for Non-Compliance:** The Employment Documentation Act imposes fines of up to 2,000 euros for failing to properly document essential employment terms and conditions or meet the required delivery deadlines.
- **Changes During Employment:** Any changes to the terms of employment must be documented in writing and delivered promptly.

2. Purpose

- **Transparency:** The primary purpose of this law is to ensure transparency and avoid legal uncertainty.
- **Comprehensive Information:** It serves to provide employees with comprehensive information about the key terms and conditions of their employment relationship.

3. Employer Responsibilities

- **Written Stipulation of Working Conditions:** On the first working day at the latest, you must provide the employee with the document containing the details of the contract, the remuneration, and the agreed working hours. Further information must be handed over no later than the seventh calendar day after the start of employment, and more general information can be delivered one month after the agreed start of employment. Evidence of the essential contractual conditions in electronic form is not allowed. The main components of this written agreement include, but are not limited to:
 - **Name and address of the contracting parties:** The employer and the employee must be named, including their respective addresses.
 - **Start of the employment relationship:** The exact date of the start of work and - if applicable - the duration of the fixed-term employment relationship must be documented.
 - **Place of work and activities:** You must specify exactly where the work will be performed, and the employee's tasks must be described in detail.
 - **Remuneration:** The salary and any special payments or benefits (such as bonuses and supplements) must be

specified.

- **Working hours:** The regular working hours per day or week must be specified (e.g., “Monday to Friday from 9 am to 5 pm”).
- **Vacation entitlement:** The number of paid annual leave days must be stated.
- **Notice periods:** The applicable notice periods for employers and employees must be clearly stated. This is particularly important as German employees generally have legally protected notice periods.
- **Reference to applicable collective bargaining agreements:** If the employment contract is governed by a collective bargaining agreement, the employer must make a note of this.
- **Notification of Changes:** If a change to the essential terms and conditions of employment occurs during the employment relationship (such as a new place of work, a change in working hours, or a pay change), the employer must notify the employee in writing no later than the effective date. For companies in the USA, where changes can often be made more flexibly and without specific written documentation, this procedure represents a significant deviation. In Germany, such changes must be precisely documented and clearly communicated to the employee.
- **Part-Time Work and Flexible Working Time:** Particularly in the case of part-time employment, employers must inform the employee in writing about working hours and the duration of work no later than one month after the start of employment. If the employee wants to change the working hours later in the employment relationship, the employer must comply with this request to the best of its ability.
- **Working Abroad:** If the employee performs the work outside Germany for more than four consecutive weeks, the employer must provide the employee with a transcript containing all essential information and the following additional information before the employee’s departure:
 - The country in which the work is to be performed and the planned duration of the work;
 - The currency for pay;

- If agreed, cash or non-cash benefits associated with the stay abroad, such as secondment allowances, as well as travel, food, and accommodation costs to be reimbursed; and
- An indication of whether the employee is expected to return and, if so, the conditions of return.

4. Potential Fines

The Employment Documentation Act provides for a fine of up to 2,000 euros for violations. The employer must record the essential contractual conditions of the employment relationship in writing, sign the record, and hand it over to the employee within the statutory deadlines. Important reminder: An email to the employee with the contractual conditions or a PDF is not sufficient.

5. Further provisions

There are several other key provisions in the law that are important for employers to note:

- **Scope of Application:** the Evidence Act applies in principle to all employees. This also applies to interns, who are considered employees in accordance with the Minimum Wage Act.
- **Violations and Legal Consequences:** If the employer violates the law, this has no negative consequences for the employee or for the validity of the employment relationship.

Conclusion

For U.S. and other foreign companies operating in Germany or managing German employment relationships, compliance with the Employment Documentation Act is essential for preventing fines and legal conflicts. We will monitor developments in this area and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. Please contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [International Practice Group](#) to learn more.