



Germany's Labor and Employment Laws

Insights

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Overview. On January 3, 2012, Businessweek.com reported that unemployment in Germany fell more than originally forecast in December due to the boom of exports of cars and machinery, as well as the mild winter that resulted in additional construction jobs. For example, Audi AG, the German automobile manufacturer, announced it may add 1,200 jobs in 2012 due to its expanded investment in electric vehicles and light-metal technology. Airbus SAS, the jumbo jet manufacturer headquartered in Germany, recently stated it was planning to hire 4,000 more employees this year. This unexpected increase in Germany's workforce in 2012 is a good reminder for employers that have employees in Germany, or are planning to hire workers in that country in the near future, to take steps to ensure they are knowledgeable about Germany's labor and employment laws. The purpose of this article is to provide some information on employees' rights and employers' obligations in Germany.

Germany is the European Union's most populous nation, with over 81 million inhabitants. It has the largest economy in the European Union, and the fifth largest economy in the world. Germany is a leading exporter of machinery, vehicles, chemicals and household equipment. It has a highly-skilled workforce of over 43 million people, and is a leading country with multi-national facilities.

Recruiting and hiring considerations. Employers should be aware that there are many differences between laws regarding recruiting and hiring in Germany and in many other countries. For example, multi-national companies familiar with the recruiting processes in the United States should be aware of the differences in conducting background checks on prospective employees in the United States as compared to conducting this process in Germany. Although in the United States the growing number of state and local laws, the Fair Credit Reporting Act and reported court decisions alleging discriminatory practices have placed more restrictions on conducting background checks, such investigations can still be lawfully conducted directly by employers third parties. However, in Germany, the legal restrictions on conducting background checks are more onerous than those in the United States.

Germany's Federal Data Protection Act is a wide-ranging law whose purpose is "to protect individuals against infringement of their right to privacy as the result of the handling of their personal data". Under this law, an "employee's personal data may be collected, processed or used for employment-related purposes where necessary for hiring decisions or, after hiring, for carrying out or terminating the employment contract". Employers should be aware that this law includes provisions stating that in most circumstances, the information sought and the methods used by employers to check an applicant's background is very limited. Inquiries may be made of applicants

employers to check an applicant's background is very limited. Inquiries may be made of applicants about personal issues, including criminal history and financial matters, only under certain circumstances.

Employers should also be aware that, depending upon the circumstances, they may have quota obligations when hiring employees. Under German law, employers who employ at least twenty workers must have at least five percent of their employee population as those who are severely disabled. Individuals who believe they have the right to be hired pursuant to this law are not entitled to a position, but they may be awarded compensation under Germany's General Equal Treatment Act. Employers who violate this law by failing to hire the required percentage of severely disabled employees must pay a compensation penalty to the government according to a set formula.

Further, although employment agreements in Germany are generally not required to be in writing, the contract term of fixed-term agreements must be reduced to writing. Employers are also legally required to provide workers, in writing, the essential terms of the employment relationship within a month of an employee's hire date. It is therefore customary in Germany for employment agreements to be in writing, with certain terms traditionally included in a written employment agreement, such as the description of work duties and work times, salary and vacation entitlement, as well as information on applicable works council or union agreement information. It is also common for employers to include probationary periods in employment contracts, which by statute cannot exceed six months, but which may be longer or shorter than six months under the terms of applicable collective bargaining agreements.

Separation of employees. Just as there are numerous statutory, union and works council considerations in the recruitment and hiring stages of the employment process, there are similar requirements in the employee separation process. Employers should ensure that they understand and follow any relevant sections of such agreements and procedures, as well as statutory law. For example, Germany's Termination Protection Act provides numerous restrictions on the ability of an employer to separate employees. Also, there are categories of employees that generally have full protection against involuntary termination, such as women during pregnancy or for a certain period of time following childbirth, or works council members while they are in office or for a period of time following their term of office. Germany's General Equal Treatment Act sets forth anti-discrimination obligations on the part of employers on the basis of numerous categories, such as gender, age, disability, sexual orientation, race, ethnicity, religion and an individual's beliefs. Harassment is also prohibited. Employers considering possible employee terminations should ensure they review the requirements of these law and any contractual or works council obligations, and, as appropriate, obtain advice of legal counsel.

Unlike many countries in Europe, Germany does not have a statutory formula for severance, although it is common for severance to be awarded as part of a lawsuit or due to individual or collective agreements, or due to works council requirements. Unless an employee is separated for cause, such as unauthorized absences and criminal acts, an employer is required to provide the

employee prior notice of separation under the terms and conditions of Germany's employment statutes.