
Effective from 01.08.2022: Stricter Rules for Employment Contracts

The amending law to implement the EU directive on working conditions came into force on 01.08.2022. This is an update of the already existing "*Nachweisgesetz*" (Evidence Act). The primary purpose is to provide employees with greater legal certainty by obliging the employer to put the essential contractual content of the employment relationship in writing. If the employer fails to do so, the employee can claim damages.

Previously, an employment contract under the "*Nachweisgesetz*" only had to contain the following items:

- name and address of the contracting parties;
- date of commencement of the employment relationship;
- duration of the employment relationship in the case of a fixed term;
- place of work;
- designation or description of the activity;
- composition and amount of remuneration;
- working hours;
- duration of annual vacation;
- termination notice periods;
- general reference to collective agreements, works agreements and service agreements applicable to the employment relationship.

With the revised "*Nachweisgesetz*", in force since 01.08.2022, the following information must now also be reflected in the employment contract in addition to the above-mentioned points:

- end date of the employment relationship in the case of fixed-term contracts;
- composition and amount of remuneration, including overtime pay, bonuses, allowances, premiums and special payments, as well as other components of remuneration, which must be stated separately in each case, and their due dates, as well as the method of payment;
- the agreed working hours, agreed rest breaks and rest periods and, in the case of agreed shift work, the shift system, the shift rhythm and the conditions for shift changes;

- any entitlement to educational training provided by the employer;
- if applicable, the employee's free choice of place of work;
- if the employer promises the employee a company pension through a pension provider, the name and address of this pension provider; the obligation to provide evidence does not apply if the pension provider itself is already obliged to provide this information;
- if agreed, the duration of the probationary period;
- if agreed, the possibility of ordering overtime work and its conditions;
- the procedure to be followed by the employer and the employee when terminating the employment relationship, the written form requirement and the deadlines for terminating the employment relationship, as well as the deadline for filing an action for protection against dismissal.

The last point in particular should not be underestimated. Though the legislator limits the legal consequences by ordering that § 7 KSchG (*effectiveness of the termination*) shall also apply in the event of an improper reference. However, an improper reference entails the risk for the employer that the legal consequence of Section 5 KSchG will occur and that delayed actions will also be permitted by court.

Another new feature is the introduction of a fine provision in § 4 *Nachweisgesetz*. Thus, in the future it will be possible to report the employer for breach of the obligation (i.e., failure to provide evidence, provision of evidence that is incorrect in terms of content, incomplete, or not provided in due form or time). The law provides for a fine of up to € 2,000.00.

Employees hired before August 1, 2022 only have to be informed in writing about their essential working conditions if they request the employer to do so. Note: Written form means the strict written form of § 126 (1) BGB (German Civil Code). Electronic form is not sufficient.

Have you already adapted your standard employment contracts to the new legal requirements? We will be happy to assist you with any questions you may have on this topic and all other problem areas relating to labor law.

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