

## 10 Questions and Answers about Labor Law in Germany

As the relationship between Turkey and Germany is very close in personal and economic ways, many Turkish companies intend to become active in the German market as well as Turkish citizens moving to Germany in order to take up employment. Therefore the following questions and answers give a survey of the most basic rights and duties according to German Labor Law.

### 1. What is the employment structure in Germany?

Employed persons can be divided into the following groups:

- Managing directors (of a private limited company etc.)
- Executives
- Jobholders (worker, employees, apprentices)
- Persons with employee-equivalent status (homeworker, businessmen)
- Sales agents (normally not employees)

Children from the age of 13 are allowed to perform easy work for maximum two hours daily.

Adolescents from the age of 15 are allowed to work a maximum of 4 weeks during their school vacation. Employers with at least 20 work places monthly must employ severely disabled persons in at least 5 % of their work places.

### 2. How is working time regulated?

At present the weekly working time in Germany varies between 28.8 and 42 hours, depending on the branch of business and the affiliation to a collective bargaining agreement.

The daily working time is stipulated by the Law on Working Hours and is generally valid for all employees except for a few exemptions particularly for executives, persons under the age

of 18, civil servants and people in military service.

Working time describes the time from the beginning to the end of the work without rest periods. The working time of an employee on a workday may not exceed 8 hours and can only temporarily be extended up to 10 hours by granting an adequate adjustment, if within 6 months or within 24 weeks 8 hours average per workday are not exceeded. The framework given by the Law on Working Hours can be extended by agreements between the collective bargaining parties or the business parties (collective agreement, bargaining agreement) or by special approval of the responsible authority.

Work on Sundays and Holidays is generally not allowed. There are exceptions for enterprises with different shifts and constant work and vitally essential work (paramedics, doctors, nurses, firemen) or for urgent or other works which can not be postponed to workdays. Modifications to regulations in collective agreements, bargaining agreements or with the approval of the regulatory authority are also possible.

Particular regulations are provided for night and shift working.

Overtime means exceeding the regular working time valid for the employee. Normally, collective agreements define overtime as exceeding the regular working time according to collective agreement, also often described as “extra work”. There are no special statutory provisions for the payment of overtime and extra work thus the payment is subject to agreements in working contracts, collective agreements or bargaining agreements. In employment relationships tied to collective agreements, those collective agreements generally contain detailed regulations about the payment of overtime or extra work. In general a surcharge of 25 % is paid for normal work days and a bonus of 50 % for Sundays and Holidays. Overtime done by apprentices has to be compensated with time off in lieu.

### 3. What is the salary structure?

The gross wage represents the entire agreed amount of compensation. The net wage can be calculated by deducting the following amounts from the gross wage:

- Employment tax (this is an income tax [prepayment](#));
- [Solidarity](#) tax: Surcharge to the income tax and corporate tax which was introduced for the financial support of the new States. The current amount of the solidarity tax is 5.5 % of income and corporate tax. The constitutionality of the solidarity tax is currently subject to a procedure at the Supreme Federal Constitutional Court. Therefore tax assessments concerning the solidarity tax are only made provisionally until the Supreme Federal Constitutional Court renders a final decision;
- Church tax (if the employee is a member of the Roman Catholic or Evangelical Church): In Baden-Württemberg and Bayern 8%, in the other states 9 % of the wage and income tax;
- Social Security Contributions.

In addition to the gross wage, the employer also pays the employer's contribution to the social contributions, insurances depending on the gross wage (e.g. assessment for the payment of maternity grant), [assessment](#) for the partial payment of wage to the employee in case of illness (in enterprises occupying less than 30 employees) and annual contributions to the responsible Mutual Indemnity Association. Therefore the wage costs are approximately 20-25 % higher than the gross wage.

### 4. What are the social security contributions?

The following social security contributions exist in Germany:

- Pension insurance fund

In general the pension insurance fund is financed by premiums which have to be paid by employer and employee, half each. Voluntarily insured self-employed persons pay the entire premium themselves. The pension insurance contribution is levied as a percentage of the gross wage restricted by the amount of the contribution assessment ceiling (west 63.000 € annual; east 54.600 € annual). Since January 1st 2007 the premium rate is 19.9 %.

In addition to the payments of employees and employers, the system is extensively supported by federal benefits which means by tax money.

- Health Insurance

There are two kinds of health insurance in Germany, [compulsory health insurance](#) and private health insurance. Compulsory health insurance is part of the solidarity system.

Compulsory coverage particularly applies to employees (falling below certain income levels) and recipients of unemployment benefit. The possibility for private health insurance exists especially for self-employed persons and employees with an income above the annual wage threshold (in 2007: 3.975 € monthly and 47.700 € p.a.).

Almost all revenues of the compulsory health insurance result from the premiums. At present the premiums are between 11.9 % and 15.8 % and are borne by employee and employer on half each.

- Unemployment insurance

Unemployment insurance is a compulsory insurance. It is financed by equal contributions of the employee and the employer, in 2007 total 4.2%. The contribution assessment ceiling in 2007 is 5.250 € in the Old States and 4.400 € in the New States.

- Nursing care insurance

The premium rate for statutory insured persons in 2007 is 1.7 % of the gross wage but only up to the ceiling of the health insurance contribution P(currently 3.562,50 € per month). Both the employee and the employer bear 0.85 % thereof. Voluntarily insured persons (e.g. selfemployed

persons) pay the entire amount themselves.

## 5. What is the income tax on wages?

The wage tax is a form of collection for the income tax and is levied on the income of non self-employed work ([withholding tax](#)). The amount of the wage tax is determined by the income tax bracket registered on the wage tax card. An exception to this taxation according to the individual tax rate is the flat rate charge of the wage tax.

The wage tax is paid by the employee but it has to be calculated and deducted by the employer. The employer is liable for the correct registration of his employees and for the retention and deduction of the wage tax. The employer can be held liable by the tax authorities for any irregularities. At the following income tax assessment the retained tax will be deducted from the income tax due.

## 6. How is the settlement regulated?

According to Labor Law, the settlement is a unique payment by the employer paid on the occasion of the termination of an employment relationship. Different from this are compensation payments such as compensation for the period of non-competition and compensation caused by the legitimate extraordinary dismissal of employee or employer. In general the German Labor Law provides no claim on a settlement except in the cases enumerated below.

In Germany settlements are paid because of:

- Extrajudicial or judicial (voluntary) compositions concerning the validity of a dismissal;
- Dissolution judgment of the Labor Court based on the unacceptability of the continuation of the employment relationship;
- Collective agreement or social plan (at mass dismissals);

- Judgment concerning claims of an employee on compensation for detrimental effects (happens very rarely in practice).

No additional age compensation payable beside the regular pension is provided by the German Law. Indeed often a company pension scheme exists which is either financed by the employer (primary insurance) or partly by the employee.

## 7. How is protection against unfair dismissal regulated?

Statutory protection against unfair dismissal is primarily stipulated in the Employment Protection Act. It is completed by numerous collectively agreed regulations and, as the case may be, by contractual regulations. The protection against unfair dismissal contains regulations which:

- demand certain forms and terms for the sentence of a dismissal;
- provide the observance of minimum terms between the notice of the dismissal and the termination of the employment relationship (notice periods);
- generally restrict the free provision for termination by the employer so that only certain reasons can justify a dismissal (primarily according to the regulations of the Employment Protection Act);
- make the dismissal in companies with a works council reliant on the orderly participation of the works council;
- generally prohibit the dismissal of certain persons with certain functions (e.g. members of the works council) or with certain attributes (e.g. severely handicapped persons, mothers, pregnant women) or make it reliant on the approval of a governmental authority or on the approval of the works council (so called “[special](#) protection against unfair dismissal”);
- prohibit a dismissal due to a certain event (e. g. dismissal by reasons of business transfer) or due to a certain motive (e.g. stipulation forbidding company penalties after strikes);

- stipulate the selection of the employees to be dismissed in the event of business structure related dismissals by the determination of social criteria (so called “social welfare oriented selection”).

Employers must also pay attention to the General Equal Treatment Act which became effective on August 18th, 2006 and is based on EU directives. Its purpose is to avoid all kinds of discrimination in working life and it is applicable in all areas of Labor Law which means also in cases of dismissal.

## **8. What is the minimum wage?**

There is no general statutory minimum wage in Germany applicable to all kinds of working relationships, but this issue is currently subject to controversial political discussions.

According to the Principle of Contractual Liberty, the amount of the payment for the employee can be freely agreed in the employment contract. But as the legislation assumes a structural imbalance between employer and employee which may possibly lead to unethical low wages by reason of unrestricted liberty of contract, regulations concerning the amount of compensation exist. If the wage does not comply with the usual payment and if it is approximately 1/3 less than usual, the wage agreement is unethical and therefore null and void. In such cases the usual compensation will take the place of the void wage agreement.

At present (July 1st, 2007) hourly minimum wages exist in the:

- Building trades: 8,40 € to 12,40 €,
- Roofing trades: 10,00 €,
- Painter and varnisher trades: 7,15 € to 10,73 €,
- Demolition trades: 8,80 € to 11,60 €,
- Commercial cleaning: 6,36 € to 7,87 €

- Electrician trades: 7,70 € eastern states, 9,20 € western states

## **9. How is the right to paid leave regulated?**

In general employees have an annual leave entitlement in each calendar year. The statutory minimum leave is 24 work days whereby Saturday is also calculated as a workday. Often a higher leave entitlement is granted by collective agreements or special agreements. Special regulations are, for example, provided by the Employment of Young Persons Act and the Severely Handicapped Persons Act.

The employee receives the full leave entitlement after a probationary period of 6 months. He must be paid his usual wage during the leave (vacation pay). A statutory claim for additional vacation pay (gratuity) does not exist. In many cases an additional vacation pay is granted on the basis of collective, operational or contractual agreed regulations or adequate company practice.

## **10. How is the probationary period regulated?**

In most cases of unlimited working relationships a probationary period is agreed for the first time of employment. The common duration is 6 months.

Occasionally also referred to as the probationary period is “employment on trial” where a limited working relationship is agreed for a certain time. An implied continuation is considered as renewal for an indefinite period with a longer termination period.

During the probationary period, shorter termination periods than usual can be agreed; minimum is a termination period of 2 weeks. Further variations are possible if based on collectively agreed regulations. As a result some collective agreements provide a termination period of 2 days within the first 4 weeks.