

LEGAL UPDATE: LABOUR AND EMPLOYMENT LAW

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Draft Bureaucracy Reduction Act and planned employment law changes

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Current situation

In August 2023 the German government (Bundesregierung) published a Key Issues Paper for the Fourth Bureaucracy Reduction Act (4. Bürokratieentlastungsgesetz, BEG IV). This Act should reduce bureaucracy and promote digitalisation. The total economic relief should total approximately EUR 682 million according to the projections. After lengthy wrangling during the legislative process, on 19 June 2024 the German government supplemented the BEG IV governmental draft with a [drafting aid](#) presented by the Federal Minister for Justice ([Bundestag document 20/11306](#)). It is assumed that the German parliament (Bundestag) will pass this version of the Act without significant amendments in the near future.

The Act envisages decreasing bureaucracy in various areas (see the [legal update on the planned changes in tenancy law](#) (German only)). It also focusses on changes to employment law.

Notification obligation

The Act on Notifying the Conditions Governing an Employment Contract ([Nachweisgesetz](#), [Na-](#)

[chwG](#)) obligates employers to provide employees with information on the main contractual terms of their employment (working hours, salary, applicable collective agreements etc.) in written form - either in the employment contract itself or in an "information sheet" supplementing the employment contract. Providing this notification in electronic form had until recently been expressly excluded ([section 2 \(1\) sentence 3 NachwG](#)).

Thankfully the legislature is finally changing this. Notifying an employee of the main contractual terms of their employment should in future also be able to be made in text form, provided the submitted document is accessible to the employee, can be saved and printed out and that with the submission the employer requests proof of receipt from the employee. But be aware, the employee may continue to request that the notification be issued to them in written form. In addition, certain sectors listed in section 2a of the Act to Combat Undeclared Work and Unlawful Employment ([Schwarzarbeitsbekämpfungsgesetz](#), [SchwarzArbG](#)) (such as construction, hospitality, haulage) are excluded from these simplifications.

Possibility of fixed term employment contract

The section of an employment contract agreeing a fixed term will in future also require the written form (section 14 (4) of the Act on Part-Time Work and Fixed-Term Employment (Teilzeit- und Befristungsgesetz, TzBfG)) in order to be valid. In accordance with the current case law of the Federal Labour Court (Bundesarbeitsgericht, BAG) (judgment dated 25/10/2017 – 7 AZR 632/15) this also applies in the event of a fixed term due to age when reaching the threshold for (standard) retirement age, which is of practical relevance. Here the BEG IV envisages a change to Book IX of the German Social Code (SGB IX) which would allow text form to be sufficient for a valid fixed term due to age. As a result of this arrangement, which is a welcome solution for all practical purposes, *in the future* it will be possible to conclude employment contracts in text form, provided alongside the fixed term due to age there is no other section agreeing a fixed term or any (post-contractual) competitive restrictions.

Hiring out temporary workers

Even necessary transfer agreements for the purpose of hiring out temporary workers between agencies and users should likewise be possible to conclude using text form, for example by email. Until now the written form has been required or the electronic form, i.e. a qualified electronic signature (section 12 (1) sentence 1 of the German Personnel Leasing Act (Arbeitnehmerüberlassungsgesetz, AÜG)).

References

Employers will also be able to provide references in electronic form (with a qualified electronic signature - section 126a of the German Civil Code (BGB)), provided the employee

agrees to this. This has not been possible until now (section 630 sentence 3 BGB).

Parental leave and part time parental leave

BEG IV envisages significant changes to the application process for parental leave or part time parental leave. In the future employees may exercise their right to parental leave (section 16 (1) sentence 1 of the Parental Allowance and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetz, BEEG)) and part time parental leave (section 15 (7) BEEG) in text form to their employer. Employers will also be able to turn down a reduction in working hours during parental leave or the division of leave in text form with reasoning (section 15 (7) sentence 4 BEEG) in the future.

Protection of young people at work

In the area of protection of young people at work, up to now the Act on the Protection of Young People at Work (Jugendarbeitsschutzgesetz, JArbSchG) has stated that employers who regularly employ at least one young person must display information including the address of the responsible supervisory authority (section 47 JArbSchG), working hours and breaks (section 48 JArbSchG) and information about supervisory authorities granting exemptions (section 54 (3) JArbSchG) on the premises. In future, as part of digitalisation, these obligations will be able to be fulfilled by publishing information on the Intranet, provided employees have unimpeded access to this at all times.

Working hours

The obligations to provide information on the premises stated in the German Working Time Act (Arbeitszeitgesetz, ArbZG) may also in the

future be fulfilled digitally (in particular by publishing on the Intranet). In accordance with section 16 ArbZG until now a copy of the ArbZG, applicable legal regulations and the collective agreements and works agreements that apply to the business had to be displayed on the premises.

Outlook

BEG IV will reduce bureaucratic hurdles in various areas of employment law. This is welcomed and urgently needed in relation to international practice. It would be likewise preferable for the bill to be passed promptly, as further measures to reduce bureaucracy in employment law would be beneficial for both parties to an employment contract.

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Phillip Raszawitz on +49 221 33660 544 or by email to praszawitz@goerg.de. For further information about the author visit our website www.goerg.com.

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