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"Active retirement" and new employment possibilities: updates on employing pensioners

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The Active Retirement Act (Aktivrentengesetz) came into force on 1 January 2026 which implemented an initiative from the current government's Coalition Agreement. Active retirement gives people who have reached standard retirement age and wish to continue to work the opportunity to earn (additional) income of up to 2,000 Euro per month tax free. In addition to the introduction of active retirement, since the beginning of 2026 the new version of section 41 (2) of the German Social Code, Volume IV (SGB IV) has made it easier for pensioners to enter into a fixed-term employment contract without an objective reason. This article provides an overview of the new developments.

Active retirement

Active retirement is meant to provide pensioners with incentives to voluntarily continue to work once they have reached statutory retirement age. This aims to counteract the labour shortage and the consequences of demographic change.

Specifically, a fiscal privilege has been created in section 3 (21) sentence 1 of the German Income Tax Act (EStG) for employees who, upon reaching the age of 67, have reached the standard retirement age (for transitional employees born from 1946 to 1964 see section 235 SGB VI). Employees who have the right to retire early due to a long contribution history (sections 236, 236b SGB VI) or a severe disability (section 236a SGB VI) will likewise first benefit from this privilege when they reach the standard retirement age.

Employees who are not self-employed and whose employer paid contributions into their pension scheme or who received contribution subsidies for their pension scheme for liberal professions as part of their remuneration will benefit from this fiscal benefit. This fiscal privilege does not apply to income from other occupations, such as self-employed work, a public service role or a mini-job, for example.

In fact, income of up to a total of 24,000 Euro per year is tax free; however, in accordance with section 3 no. 21 sentence 3 EStG for each month in which the requirements of section 3 no. 21 sentence 1 EStG are not met the allowance is reduced by a twelfth. It then follows that the tax free amount for each month is a maximum of 2,000 Euro. If the employee earns more than 2,000 Euro a month, the amount exceeding this is taxable in accordance with the measures of the applicable tax law.

Even if it is common to refer to it as "additional income", the employee does not have to be

drawing a pension or even to have a pension to draw from in order to claim the fiscal privilege.

No prohibition of successive fixed-term employment contracts for pensioners without an objective reason

The revised section 41 (2) SGB VI will make it easier for pensioners to enter into fixed-term employment contracts.

In accordance with the provisions of section 41 (1) sentence 3 SGB VI, until now an existing employment contract could only be extended once the employee reached standard retirement age. Instead, the revised section 41 (2) SGB VI allows pensioners and employees to enter into a new fixed-term employment contract **without an objective reason** as the prohibition in section 14 (2) sentence 2 of the Act on Part-Time Work and Fixed-Term Employment (Teilzeit- und Befristungsgesetz, TzBfG), which does not permit a fixed-term employment contract to be entered into without an objective reason when the employee has been previously employed by the employer, does not apply. However, the pensioner must still have reached their individual standard retirement age to be eligible for the fiscal privilege.

The statutory reform has resulted in some benefits for the parties to the employment contract in comparison with continued employment opportunities in accordance with section 41 (1) sentence 3 SGB VI. This allows other working conditions to be agreed in the new employment contract. Employees often wish to reduce their hours, for example. Conversely, changing the working conditions at the same time as the agreement on postponing the termination date of the contract is generally considered to be prohibited within the scope of application of section 41 (1) sentence 3 SGB VI.

Moreover, the contract may only be fixed for a maximum fixed term of two years and may be extended up to three times within this two-year period. In total, the fixed-term employment may continue for a maximum of eight years which can be achieved by concluding four employment contracts each for a fixed term of two years. Finally, a maximum of 12 fixed-term employment contracts may be entered into within these eight years.

Comments

Both active retirement and the possibility of entering into fixed-term employment contracts without an objective reason and without a prohibition on successive contracts are making cooperation between pensioners and employers look more attractive for both sides. In this respect these statutory reforms are welcomed. However, despite the statutory reforms some questions remain unanswered and this can result in pitfalls which employers need to be aware of when employing pensioners.

The statutory reforms do not clearly state in section 41 (2) SGB VI what format the section of the employment contract agreeing a fixed term should take. Due to the reference to section 14 (2) TzBfG contained in section 41 (2) SGB VI and the conclusion of a new fixed-term employment contract there is a strong argument that the **written form** must be used (section 126 of the German Civil Code (BGB) ("*pen and paper*") in accordance with section 14 (4) TzBfG. It is likewise permissible that when concluding the contract in electronic form in terms of section 126a BGB (including qualified electronic signatures), it must be ensured that the obligations under the German Notification of Conditions Governing Employment Act (Nachweisgesetz, NachwG) (see section 2 (1) sentence 7 no. 3 NachwG) are fulfilled, in particular.

In contrast to postponing the termination date of the contract pursuant to section 41 (1) sentence 3 SGB VI (*"during employment"*) it appears to be conclusive that a fixed-term employment contract without an objective reason does not require existing employment between the pensioner and the employer. Consequently, concluding a fixed-term employment contract without an objective reason on the basis of section 41 (2) SGB VI with a "different" employer is considered admissible when previous employment at this "different" employer is considered harmless.

The specific interpretation of the new statutory provisions will result in wide-reaching follow-up questions about employing pensioners. To what extent would the typically low need for protection of employees who have exceeded the standard retirement age be taken into consideration within the scope of social criteria when dismissal on operational grounds are announced? In the future could employers explicitly describe jobs as only for "active pensioners"/employees who have exceeded the standard retirement age and still conform to the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, AGG)? Answers to these and further questions will depend on the specific individual circumstances as well as convincing arguments on the part of the employer.

We are happy to provide advice in all areas in relation to active pensioners and the legal employment of employees who have reached the standard retirement age or will do so in the foreseeable future.

If you require any further information on this topic please contact us and we will be happy to help.

Note
This overview is solely provided for information purposes and should not replace professional legal advice. If you have any questions, please contact your usual contact at GÖRG or the author Dr. Alberto Povedano Peramato on +49 221 33660 508 or APovedano@goerg.de. Information about the author is available on our website www.goerg.de.

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