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LEGAL UPDATE LABOUR AND EMPLOYMENT LAW

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Labour law consequences of the 2026 relief bonus

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Employees to get up to 1,000 Euro tax free – however the crisis bonus will have labour law consequences for employers which have already led to legal actions in the past with the inflation bonus. HR needs to know this.

The 2026 relief bonus planned by the German government is supposed to assist employees with the continued higher cost of living and energy prices. A payment of up to 1,000 Euro per employee is envisaged which would be free of tax and social insurance contributions. In contrast to classical government benefits, this payment is not issued directly by the state, but comes from employers. This construction transfers the practical implementation and therefore also the legal issues primarily to the labour law sphere.

Not obligatory, but tied to legal limits

Even if the specific statutory framework is pending, it is already apparent that the bonus will be based on known models such as the inflation relief bonus. This was also stated by the Government spokesperson at yesterday's Government press conference.

Based on the information currently available there is no general obligation to pay this bonus to employees. Employers are essentially free to decide whether to pay the bonus.

This discretionary nature opens up room to manoeuvre, but does not represent complete legal freedom in any way.

As soon as an employer decides to pay the bonus to employees, the specific format they use for this is subject to limits set by labour law. The relief bonus is a part of the company remuneration system even if it is not viewed as consideration for work carried out.

Relief bonuses must always be paid on top

The fiscal privileges of the relief bonus are expected to be tied to the fact that it is an actual additional benefit granted. Therefore, the payment must be made on top of the otherwise owed remuneration. It follows that the existing components of remuneration may not be replaced by the bonus or it be used to alter the existing components of remuneration. In particular, it is not permitted to offset the bonus against already existing entitlements or to reallocate benefits owed accordingly.

In practice, this means the employers must not finance the relief bonus by just restructuring remuneration, but must pay an additional, independent benefit.

Principle of equal treatment under labour law

Employers who decide to pay the relief bonus must, in particular, ensure that the principle of equal treatment under labour law is adhered to. This states that employees in comparable circumstances must be treated the same, which means that the distribution of the bonus must be based on demonstrable and objectively justified criteria.

However, it is permitted to not grant the bonus across the board, for example employers can make distinctions by introducing a sliding scale based on income level, taking into consideration the number of hours worked or tying the bonus to actual work carried out. Employers may also consider restricting the bonus to certain categories of employees, provided this is based on objective criteria.

Arbitrary differences or creating categories of employees based on irrelevant criteria are not permitted. If there are any breaches there is a threat of upwards adjustment so that disadvantaged employees are able to assert a claim for equal treatment which could result in considerable financial consequences.

Groups of people who may be excluded as stated by the courts

Case law regarding the inflation relief bonus shows under what circumstances employers may exclude paying the bonus to individual groups of employees. At the same time, the courts provide important information about labour law framework for the planned relief bonus.

The important factor here is always whether the distinction is objectively justified and if the principle of non-discrimination and the principle of equal treatment under labour law are observed.

The Baden-Württemberg Regional Labour Court (Landesarbeitsgericht, LAG) has ruled that an inflation relief bonus may be structured as a special payment related to job performance. This means that employees who do not carry out any work in the reference time period, such as employees who are on long-term sick leave, may have to be excluded from the payments (Baden-Württemberg LAG, judgment dated 24 January 2024, case no. 10 Sa 4/24).

Conversely, the Federal Labour Court (Bundesarbeitsgericht, BAG) has clarified that the blanket exclusion of employees in the release phase of pre-retirement part time work may not be permitted as this would constitute discrimination against part-time employees (BAG, judgment dated 12 November 2024, case no. 9 AZR 71/24).

Whereas the Düsseldorf LAG ruled that this is permitted for employees who are on parental leave as the employment contract is suspended during this time (Düsseldorf LAG judgment dated 14 August 2024, case no. 14 SLa 303/24).

In one case, the Stuttgart Labour Court (Arbeitsgericht, ArbG) held that employees on fixed-term contracts were not permitted to be excluded from the inflation relief bonus without an objective reason (Stuttgart ArbG, judgment dated 14 November 2023, case no. 3 Ca 2713/23).

Employers are not permitted to link the payment to the existence of the employment contract beyond a certain effective date as this could disadvantage employees on fixed-term contracts if the bonus relates to a time period that has already elapsed.

Finally, there is the judgment of the Essen ArbG which demonstrates that regulations regarding effective dates may also be permissible. Employers may make a distinction and justifiably link the bonus payment to an active, unterminated employment contract at a specific point in time and may even be permitted to reclaim the payment (Essen ArbG, judgment dated 12 October 2023, case no. 1 Ca 1371/23).

These cases imply that it is possible to make distinctions, but they must always be implemented consistently and not include arbitrary or discriminatory criteria.

Co-determination of the Works Council

The format of the relief bonus is a part of the company remuneration system and is therefore subject to the right of co-determination in accordance with section 87 (1) no. 10 of the German Works Council Constitution Act (Betriebsverfassungsgesetz, BetrVG). It does not matter that the bonus is not paid as consideration for work carried out. If there is a Works Council, it should, in particular, be involved when determining the principles of distributing the bonus, the categories of employees to benefit from the bonus as well as the specific payment terms for paying the bonus, for example in staggered payments or by instalments. The basic decision of whether to grant the bonus at all is not subject to co-determination as this is a decision solely for the employer.

In practice, concluding a Works Agreement often serves as a legally compliant method of implementing this bonus. If the Works Council is not properly involved this may result in delays and legal disputes.

Role of collective agreements

In companies bound by collective agreements, the parties involved in collective bargaining are of special importance. The relief bonus may become part of negotiating collective agreements and may be bindingly regulated in the collective agreement. In this case employees have an enforceable claim.

Collective agreements have the advantage that there are standardised regulations for entire sectors or companies, which thus produces legal certainty. At the same time, they enable the bonus to be included in the total remuneration package of adjustments to remuneration and term regulations.

However, there are practical restrictions. Many collective agreements have fixed terms and include the obligations to refrain from industrial action. The Government has most likely restricted the relief bonus to only be payable in 2026, in contrast to the previous inflation relief bonus which could be paid over a significantly longer period. It will therefore be difficult to implement this in good time unless there are ongoing collective bargaining negotiations. This means that the actual dissemination of the bonus would significantly depend on the collective bargaining coverage.

Comments

The relief bonus is usually paid out with salary. It should be made clear, however, that this payment is a tax-free additional benefit.

We recommend the following structured approach to be carried out in a legally certain manner.

First the economic conditions should be assessed.

Then clear distribution criteria must be drawn up. If there is a Works Council, this must be involved in good time.

Employers should follow the following central action points for the planned relief bonus.

- **Consider the voluntary nature of the bonus:**
  There is no obligation to pay the bonus. However, decisions should be strategically made while considering employee retention and competitiveness.
- **Check collective agreements:**
  Existing or upcoming collective agreement negotiations may provide a suitable framework for these payments to be carried out in a uniform, legally certain manner.
- **Involve the Works Council in good time:**
  Where questions on co-determination are involved it is absolutely necessary to coordinate these in good time.
- **Comply with the additionality principle:**
  The bonuses must not replace existing components of remuneration.
- **Ensure equal treatment:**
  Differences must be documented and objectively justified.
- **Consider economic performance:**
  In particular, small companies should carefully assess the financial viability of paying the bonus.
- **Bear the time frame in mind:**
  Making a decision in good time is required due to the time limits that have been discussed in this article.

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. In case of any queries, please get in touch with your designated GÖRG contact person or the authors Dr. Alexander Insam on +49 69170000160 or at ainsam@goerg.de or Annabelle Manganaro on +49 69170000163 or at amanganaro@goerg.de. Information about the author is available on our website www.goerg.de.

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