



German Act on the Notification of Conditions Governing the Employment Relationship 2022

Directive (EU) 2019/1152 regarding transparency and predictability of working conditions

Your Speakers



Lars Hinrichs

Partner | Attorney-at-law
Specialist Attorney for Employment Law
Employment Law & Benefits
Hamburg

E: lhinrichs@deloitte.de
M: +49 151 5807 7025
T: +49 40 3785 3828



Nathalie Polkowski (née Nemecek)

Counsel | Attorney-at-law
Specialist Attorney for Employment Law
Employment Law & Benefits
Munich

E: npolkowski@deloitte.de
M: +49 151 5807 1164
T: +49 89 29036 8996

**Gerrit R. Neuhaus**

Counsel | Attorney-at-law
Employment Law & Benefits
Cologne

E: gneuhaus@deloitte.de
M: +49 151 1829 3178
T: +49 221 9732 4444

Agenda

1. Legal Basis for the New Act on the Notification of Conditions Governing the Employment Relationship
(Nachweisgesetz, “NachwG 2022”)
2. Amendments to the Act on the Notification of Conditions Governing the Employment Relationship
(Overview)
3. Deep Dive:
 - Secondments
 - Act on Part-Time Work and Fixed-Term Employment
 - Employee Lending Law
4. Potential Sanctions
5. Deep Dive:
 - Remuneration Components
 - Occupational Pension Scheme



The New Act on the Notification of Conditions Governing the Employment Relationship (NachwG 2022)

EU Working Conditions Directive

*in effect since
1 August 2022*



1

- Basis is the so-called EU Evidence Directive (91/533/EWG) of 1991, recast by EU Directive 2019/1152 on transparent and predictable working conditions (“Working Conditions Directive”)

2

- The Working Conditions Directive is intended to improve working conditions by establishing minimum requirements for the provision of information on the essential aspects of the employment relationship and working conditions

3

- Increasing employment transparency and predictability

4

- Guaranteeing the adaptability of the labour market

The New Act on the Notification of Conditions Governing the Employment Relationship (NachwG 2022)

Implementation of the EU Working Conditions Directive

- To implement the Working Conditions Directive, 11 laws were amended in total.
- The amendments **primarily affect the NachwG 2022.**
- In addition, the following laws were also amended:
 - **Act on Part-Time Work and Fixed-Term Employment** (Teilzeit- und Befristungsgesetz, “TzBfG”) (**Sec. 15 para. 3 TzBfG**)
 - **Employee Lending Law** (Arbeitnehmerüberlassungsgesetz)
 - Industrial Code (Gewerbeordnung, „GewO“)
 - **Posted Workers Act** (Arbeitnehmer-Entsendegesetz)
 - Vocational Training Act (Berufsbildungsgesetz), Crafts Code (Handwerksordnung)
 - Anesthesia Technical and Surgical Technical Assistants Act (Anästhesietechnische- und Operationstechnische-Assistenten-Gesetz), Emergency Paramedic Act (Notfallsanitätergesetz), Act on the profession of pharmaceutical-technical Assistant (PTA-Berufsgesetz)
 - Maritime Labour Act (Seearbeitsgesetz)

NachwG 2022

Overview

- The NachwG 2022 includes **amendments in 4 regulatory areas**:
 - **Expansion of the group of individuals** to whom evidence of the contract's essential terms must be provided to **include all employees**, regardless of the duration of their employment relationship.
 - **Expansion of the minimum catalogue** and the contractual conditions that must be proven **in the case of activities abroad**.
 - **Reduction of the timeframes** within which essential contract terms or amendments must be notified.
 - **Fines** for non-compliance with the obligations to provide evidence.
- The **requirement** to provide evidence or proof of the essential terms of the contract **in writing (paper form)** remains unchanged.
- **Regulations** that deviate from the requirement to provide evidence to the **disadvantage of employees** are **still excluded**.

NachwG 2022

Most important expansions of the “minimum catalogue”

- **Reference requirement when choosing the place of work**
- **Duration of an agreed-upon probationary period**
- Composition, amount, and due date of the various **remuneration** components, per component, including category of payment.
- **Rest breaks and agreed-upon (daily and weekly) rest periods**
- **Information on the shift system, shift rhythm and any prerequisites for shift changes** must be provided
- **Work on demand** (Sec. 12 TzBfG)
- **Overtime**
- **Advanced training**
- **Termination procedures**

Attention!

Expansion of the additional obligations to provide evidence when working abroad



- Work abroad estimated to **exceed 4 consecutive weeks** (previously: more than 1 month)
- Obligation to notify **prior to commencement of work abroad**:
 - **Country or the countries**
 - **If applicable, cash or non-cash benefits**, esp. secondment allowances and regulations on the reimbursement of travel, subsistence and accommodation expenses,
 - **Return/return conditions**

Please note: If the secondment falls **within the scope of the EU Posted Workers Directive**, the employee must also be informed about the **remuneration** to which the employee is entitled according to the law of the EU Member State to which he/she is posted and the **link** to the so-called “single official national website” of the EU Member State to which the employee is posted.

Amendments to the Act on Part-Time Work and Fixed-Term Employment

Responding to demands for change

- Reaction of the employer to the demand for change within one month in text form (incl. justification).
- If the employee has previously expressed a demand for change in text form within the previous 12 months and the employer has responded in text form with a reasoned response, the demand need only be discussed verbally.

Establishing a time frame for work on demand

- In the future, if work on demand is agreed upon, the employer must also specify the timeframe (reference hours and reference days) within which the employee must work when demanded.
- The employee is not required to work outside the specified time frame.

Proportionate probationary period for limited terms of employment

- Previous legal situation: Generally, the probationary period for (limited and unlimited) employment relationships is limited to six months.
- In fixed-term employment relationships, however, a probationary period can only be effectively agreed upon within this framework (6 months) if its duration is proportional to the anticipated duration of the limited term and the activity type.

Responding to demands for permanent employment contracts

- If an employee on a limited-term contract whose employment relationship has lasted longer than six months has given written notice of his or her desire for an employment relationship of indefinite duration, the request must be responded to within one month in text form stating the reasons.
- However, there is no obligation to reply if the employee has previously expressed the desire for a permanent employment relationship within 12 months.

NachwG 2022

Deep Dive: Amendments to the Employee Lending Law

- **Information about the hirer**

The company and address of the hirer must now be communicated to the temporary employee via text (e.g., email) by the hirer.

- **Responding to desires for adoption**

- If a temporary employee who has been **leased out for at least 6 months** has notified the **hirer in text form** of his **desire to be adopted**, the hirer must reply to this request **within one month, also in text form, stating the reasons**.
- However, there is **no obligation to reply if** the employee **has previously** expressed the desire to be adopted **within 12 months**.

NachwG 2022

Time limits for the fulfilment of the obligations to provide evidence

Time limits for new employment relationships:

- contracting parties, composition and amount of the individual remuneration components and their due date, as well as the category of payment, agreed working hours (including agreed breaks and rest periods as well as general information in the case of agreed shift work) **by the first day of work performance at the latest**
- no later than on the **7th calendar day** after the agreed upon commencement of the employment relationship: among other things, information on the place of work, probationary period, possibility of ordering overtime and its conditions
- **no later than 1 month after the agreed start of the employment relationship**: leave, entitlement to advanced training, name and address of the pension provider in the case of “external” operational pension schemes, termination procedures, applicable collective bargaining agreements, company or service agreements.

Time limits for existing employment relationships at the **request of the employee**:

- after **7 days** at the latest, stipulate certain contractual conditions from the “minimum catalogue” (e.g. composition and amount of the remuneration components and their due date as well as the category of payment, working time including agreed-upon rest breaks and rest periods as well as general information in the case of agreed shift work)
- after **1 month** at the latest, the other contractual conditions of the “minimum catalogue” (e.g. entitlement to advanced training, termination procedure to be followed)

must be provided as evidence, insofar as the employee does not already have the information.

Please note: **Amendments** to significant terms and conditions of the contract must be notified no later than the date on which they take effect (e.g. salary increases).

NachwG 2022

Enforcement of the obligation to provide evidence: Administrative offence and the employee's claim arising from the employment relationship

- If the **obligations to provide evidence** of significant terms and conditions of the contract (including additional obligations to provide evidence in the case of activities abroad and in the case of amendments) **are not fulfilled, not fulfilled correctly, not fulfilled completely, not fulfilled in the prescribed manner or not fulfilled in a timely manner**, this constitutes an administrative offence.
- **Each violation** of the obligation to provide evidence could result in a **fine of up to 2,000 euros**.
- Employer's right to summary and delivery of terms and conditions of employment (enforceable)

NachwG 2022

The remuneration components that must be provided as evidence: General requirements

- **Composition and amount of remuneration**
 - Remuneration includes all components of remuneration (including non-cash benefits)
 - Amount refers to the respective gross remuneration (net remuneration only to be indicated in case of net remuneration agreement)
 - Indication of the amount in EUR (Sec. 107 para. 1 GewO); unless a different currency has been agreed upon in the employment contract
- **Separate disclosure of the individual remuneration components**
 - In the case of remuneration components granted according to the same parameters - to all/larger numbers of employees - may also be performed via general documentation referred to in individual information to the employee
- **Category of payment**
 - As information on the concrete performance content of the individual remuneration component
- **Maturity**
 - As legal maturity (usually documented by payment date)

NachwG 2022

The remuneration components that must be provided as evidence: Individual components

- **Remuneration for overtime**

- As a formal requirement (= employer is free to remunerate overtime completely/partially with the basic remuneration (in compliance with the general terms and conditions case law of the German Federal Labour Court))
- Accompaniment with the requirement of Sec. 2 para. 1 s. 2 no. 10 NachwG 2022, according to which (now) concrete conditions for the ordering of overtime must also be documented

- **Bonuses and supplements**

- Primarily as hardship allowances for work under special circumstances (e.g. weekend/holiday allowance, hazard allowance)

- **Premiums**

- As one-off payments linked to the occurrence of the relevant condition precedent (e.g. service anniversary, acceptance of improvement proposal by employer)

- **Special payments**

- As fixed or variable - periodically recurring - one-off payments
- Including information on any voluntariness/reservation of revocation

- **All other remuneration components**

The remuneration components that must be provided as evidence: Variable remuneration

- **Concrete obligation to provide evidence depends on the content-related design of the variable remuneration:**
 - Starting point: (general) specification of performance parameters in the legal basis and their specific definition for each reference period
 - If the performance parameters are determined by target agreement/unilateral target setting by the employer: General reference to this is sufficient; obligation to provide evidence does not include the individual target agreement or target setting for the specific reference period
 - In the case of a discretionary determination:
 - Obligation to provide evidence includes (only) reference to this (but: employer will announce the discretionary parameters to the employee in individual cases for reasons of substantive labour law)
 - If the discretionary right also relates to the determination of the amount of the variable remuneration component, this must be included in the evidence (the employer is not obliged to provide further information on the amount of remuneration)

NachwG 2022

The remuneration components that must be provided as evidence: Occupational Pension Scheme

- **Concerns (only) external implementation channels without separate statutory information obligations (Sec. 2 para. 1 s. 2 no. 13 NachwG 2022)**
 - Only affected by the implementation method of the provident fund: Subject of the information company and address of the external pension provider
 - Independent information obligations of the external pension provider in the implementation channels of direct insurance (Sec. 144 para. 1, 234m German Insurance Supervision Act), Pensionskasse (Sec. 234m German Insurance Supervision Act) and Pensionsfonds (Sec. 237 para. 1 s. 1, 234m German Insurance Supervision Act) (please refer to our Deloitte Pension Experts Client Alert: <https://www2.deloitte.com/dl/en/pages/legal/articles/informationspflichten-pensionskassen.html>)

Thank you for your attention!

Your Contact



Lars Hinrichs

Partner | Attorney-at-law
Specialist Attorney for Employment Law
Employment Law & Benefits
Hamburg

E: lhinrichs@deloitte.de
M: +49 151 5807 7025
T: +49 40 3785 3828



Nathalie Polkowski (née Nemecek)

Counsel | Attorney-at-law
Specialist Attorney for Employment Law
Employment Law & Benefits
Munich

E: npolkowski@deloitte.de
M: +49 151 5807 1164
T: +49 89 29036 8996



Gerrit R. Neuhaus

Counsel | Attorney-at-law
Employment Law & Benefits
Cologne

E: gneuhaus@deloitte.de
M: +49 151 1829 3178
T: +49 221 9732 4444

Experience the future of law, today

More than
2,500
attorneys

in
75+
countries

Seamless collaboration

Across borders and with other Deloitte business lines

As part of Deloitte's global professional services network, Deloitte Legal works closely with colleagues worldwide to provide clients with integrated advice and multinational solutions that are:



Consistent with their corporate vision



Technology-based for better collaboration and more transparency



Tailored to the type of company and the local market



Sensitised to the respective regulatory provisions





Deloitte Legal means the legal practices of Deloitte Touche Tohmatsu Limited member firms, their affiliates or partner firms that provide legal services.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/de/UeberUns to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services; legal advisory services in Germany are provided by Deloitte Legal. Our global network of member firms and related entities in more than 150 countries and territories (collectively, the “Deloitte organization”) serves four out of five Fortune Global 500® companies. Learn how Deloitte’s approximately 330,000 people make an impact that matters at www.deloitte.com/de.

This communication contains general information only, and none of Deloitte Legal Rechtsanwaltsgesellschaft mbH or Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.