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To our clients

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Amendment of the Act on notification of conditions governing an employment relationship („Nachweisgesetz“):

- **Extended information obligations of employers**
- **New risk of fines**

Dear Sir or Madam

On 23 June 2022, the German Bundestag passed comprehensive amendments to this Act. Last Friday, the law also passed the Bundesrat, so that the amendments will already come into force on **1 August 2022**.

What is at stake?

For a long time, this Act has obliged employers to summarise the essential conditions of the employment relationship in writing and to hand them out to their employees. So far, this has attracted little attention. Firstly, many employment contracts contained the required information, and secondly, violations of the law were practically without sanction. This is now changing.

What changes?

Extension of the catalogue of contractual conditions to be proven in the new § 2 para. 1, among others additional obligation to refer to

- agreed rest breaks and rest periods and, in the case of agreed shift work, the shift system, shift rhythm and conditions for shift changes,
- in the case of work on call: the exact modalities,
- details of overtime pay
- the name and address of a pension provider for occupational retirement provision, unless the pension provider is obliged to provide information
- the procedure to be followed by the employer and the employee in the event of dismissal, in particular the time limit for bringing an action against dismissal
- specific information on employment abroad of 4 weeks or more
- additional information in the case of work abroad that falls under the Posting of Workers Directive.

The information must be provided before the employee starts work

and

be in writing, i.e. in analogue form and signed by hand. E-mail, fax, scan or similar are not permitted, nor is electronic form.

The new legal text is often vague, and in some cases it can only be "speculated" what requirements the courts will impose.

Whether violations of the obligation to provide evidence can lead to the partial invalidity of employment contracts and/or to claims for damages by the employee is already being discussed among experts.

Completely new § 4: Risk of fines

Violations of the (new) Act may result in a fine of up to 2,000 euros. This might seem manageable - but the problem lies deeper: for commercial and other entrepreneurial activities, administrative offences of 200 - two hundred - euros or more must be entered in the central trade register, cf. section 149 (2) no. GewO. Such entries can be disadvantageous where the company must document its trustworthiness under trade law, e.g. when issuing an employee leasing permit or when participating in public tenders.

In addition to the person acting, the company can also be fined (so-called association fine, cf. section 30 OWiG).

What needs to be done?

- Employers who want to meet the new requirements with their employment contracts must review their sample contracts and adapt them depending on the status.

Alternative:

Standardised information sheet adapted to your company in addition to the employment contract.

- Old contracts do not need to be adapted. However, employees with old contracts can request information in line with the new regulations, to which the employer must then respond within seven days as a rule.

We will support you in implementing the new legal provisions. Please feel free to contact us with your questions!

With kind regards



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