



TaylorWessing

Session #5

Webinar

15 May 2024

TaylorWessing

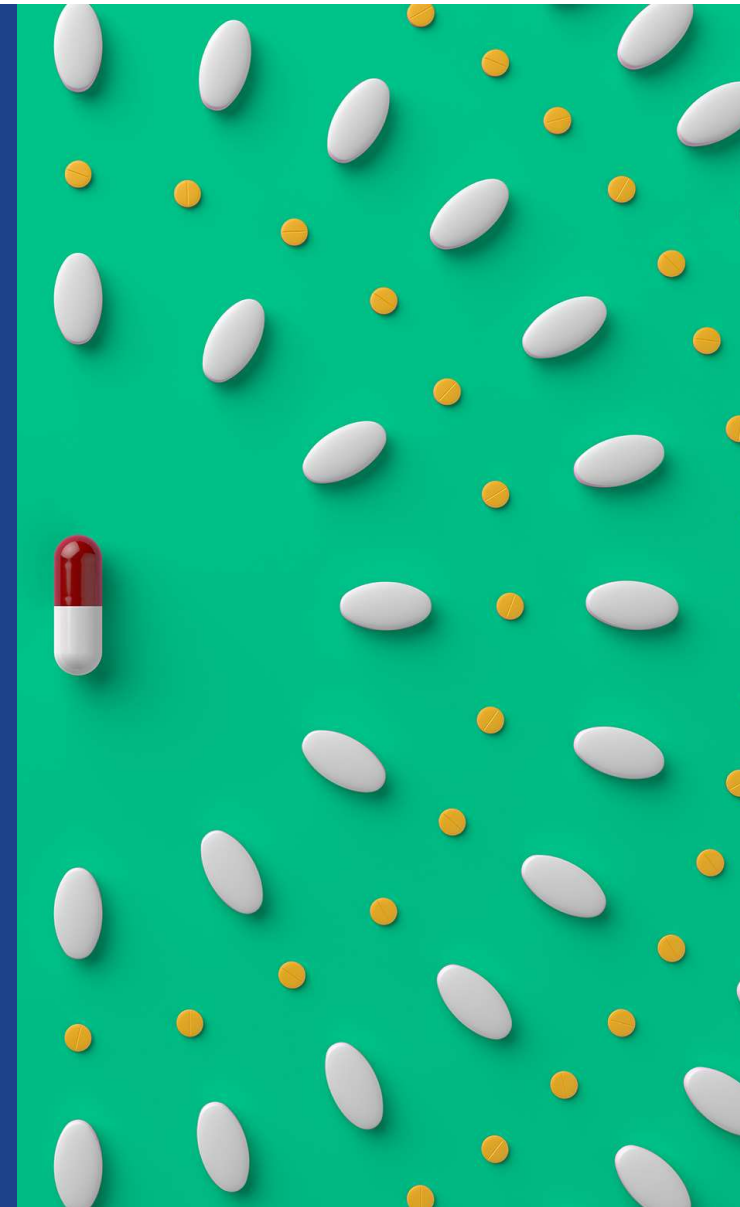


German Employment Law in a Nutshell

15 May 2024 | Dr. Jan W. Grawe

Introduction

- German Employment Law is **complex and subject to various statutory regulations**.
- As German Employment Law is said to be largely focused on „**Employee protection law**“, it is crucial for companies to be familiar with statutory law and some further basic issues.



Agenda/ Hot Topics

1	Initiation of Employment Relationship
1.1	General Information
1.2	General Equal Treatment Act
1.3	Application Routes and Procedure
1.4	Job Interview
2	Employment Contract & Content
2.1	Upfront: Practical Tips
2.2	Conclusion
2.3	Form
2.4	Minimum Requirements in Terms of Content
2.5	Minimum Statutory Law
2.6	Working Time (Working Time Act)
2.7	Sickness and Sick Pay (Continuation of Remuneration Act)



Agenda/ Hot Topics

2.8	Vacation (Federal Vacation Act)
2.9	Fixed-Term (Part-Time and Limited Term Employment Act)
3	Termination of Employment Relationships
3.1	General Principles
3.2	Types
3.3	Protection Against Dismissal Act
3.4	Special Protection Against Dismissal
4	Social Security
5	Income Tax
6	Employee Representation



1. Initiation of Employment Relationship

1.1 General Information

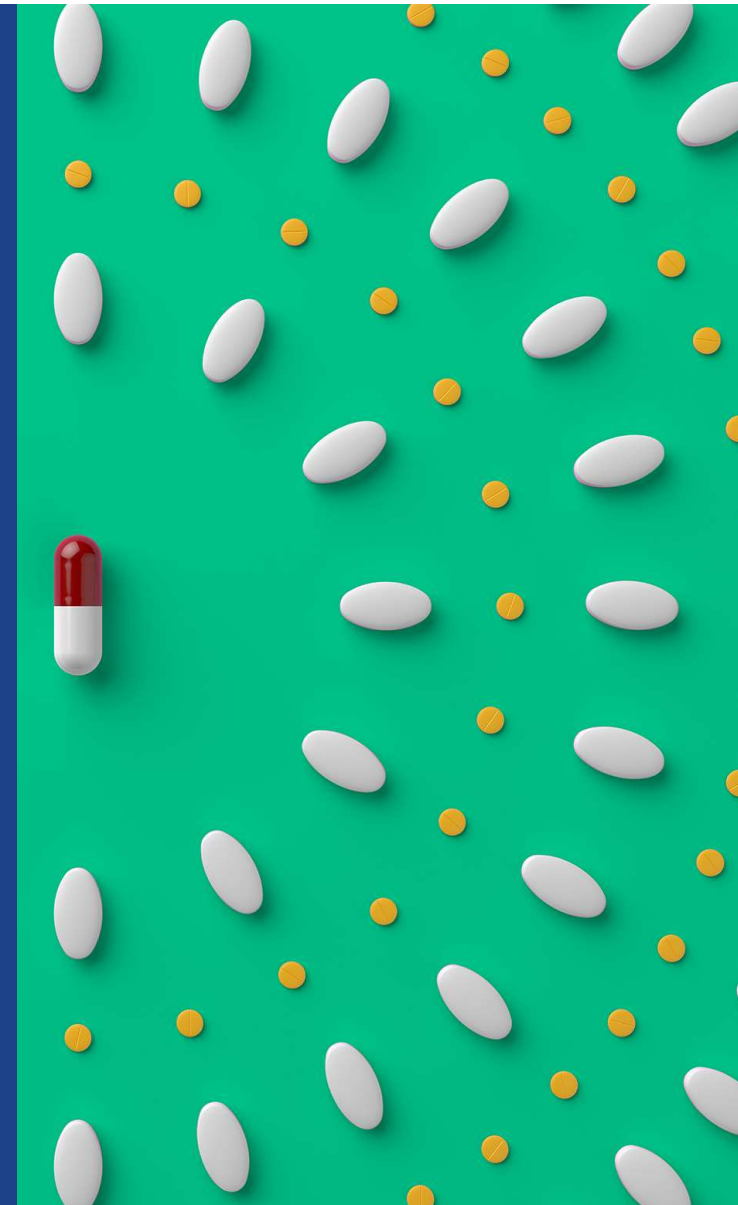
- Foreign company may **directly conclude an employment contract** with a local employee
- Foreign company may **set up a subsidiary acting as the employer**; most common: limited liability company (“GmbH”)
- The employer is generally **free to determine** the job profile and requirements for the job (freedom of entrepreneurial decision). However, this freedom is limited by the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*).
- Be careful with **background checks!**



1. Initiation of Employment Relationship

1.2 General Equal Treatment Act

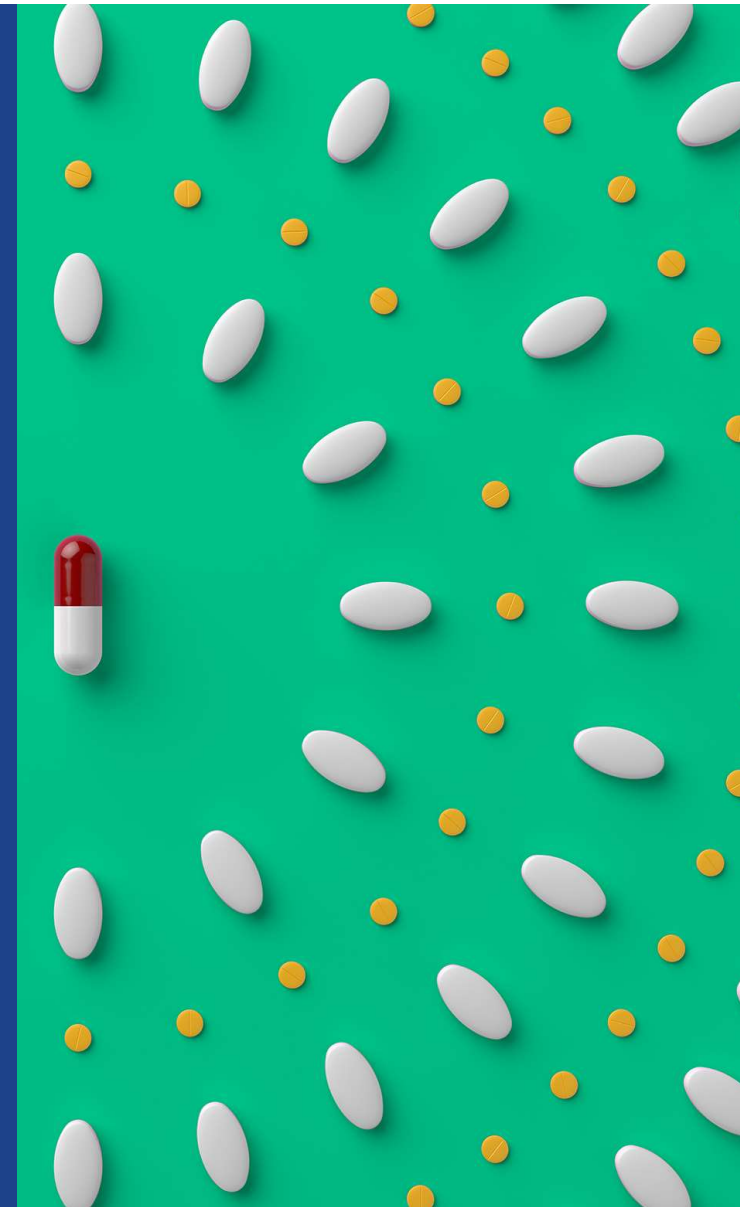
- **Purpose:** Protection of Employees during application process / employment relationship and after termination of relationship against discrimination based on reasons of race, ethnic origin, sex, religion, disability, age or sexual identity.
- Covers **all** employees
- Employer must take the **necessary measures** to protect employees against adverse treatment
- Employee has the **right to make complaints** to the competent persons in the workplace
- Provisions in employment contracts which are in violation of the prohibition of adverse treatment are invalid
- **In practice:** Employer should inform and educate the employees who are entitled to issue directives



1. Initiation of Employment Relationship

1.3 Application Routes and Procedure

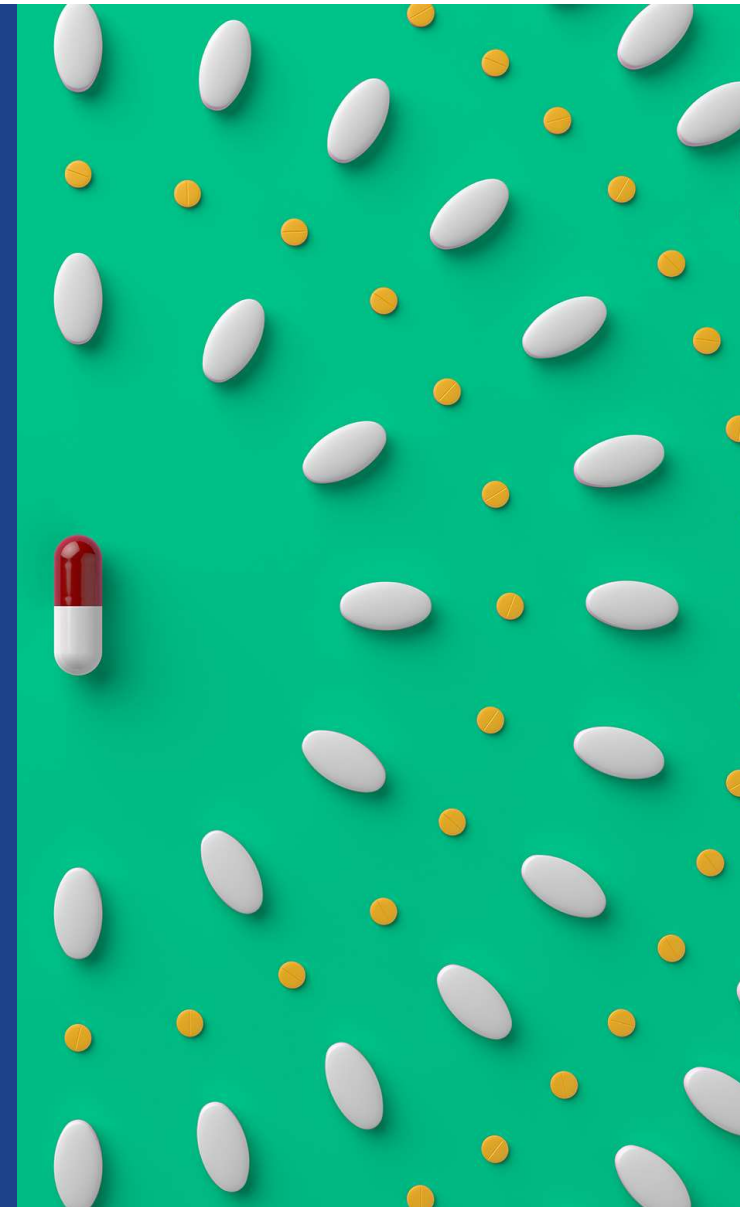
- Strong influence of **General Equal Treatment Act**
- **Type of Application**
 - Speculative or unsolicited application
 - Application based job advertisement of employer advertising a vacancy
- **Form of Job Advertisement** (general content)
 - Information on the employing company
 - Job profile
 - Optionally information on payments
- **Application Process**
 - Employer must follow fairly international standard
 - Important role of CV's and references



1. Initiation of Employment Relationship

1.4 Job Interview

- Employer may only ask admissible questions.
- Admissible are questions **in connection with the possible employment relationship**.
- Applicants only have to answer **admissible** questions
- **Which questions** are admissible?
 - Pregnancy / Family Planning? No
 - Previous convictions? No, unless reference to content of employment relationship
 - In summary: Refrain from asking questions related to race, ethnic origin, gender, religion or secular belief, disability, age or sexual identity
- If a question is inadmissible, the applicant has a **right to lie**.
- In case of a lie without justification, the Employer has the **right to challenge the employment contract** retroactively.



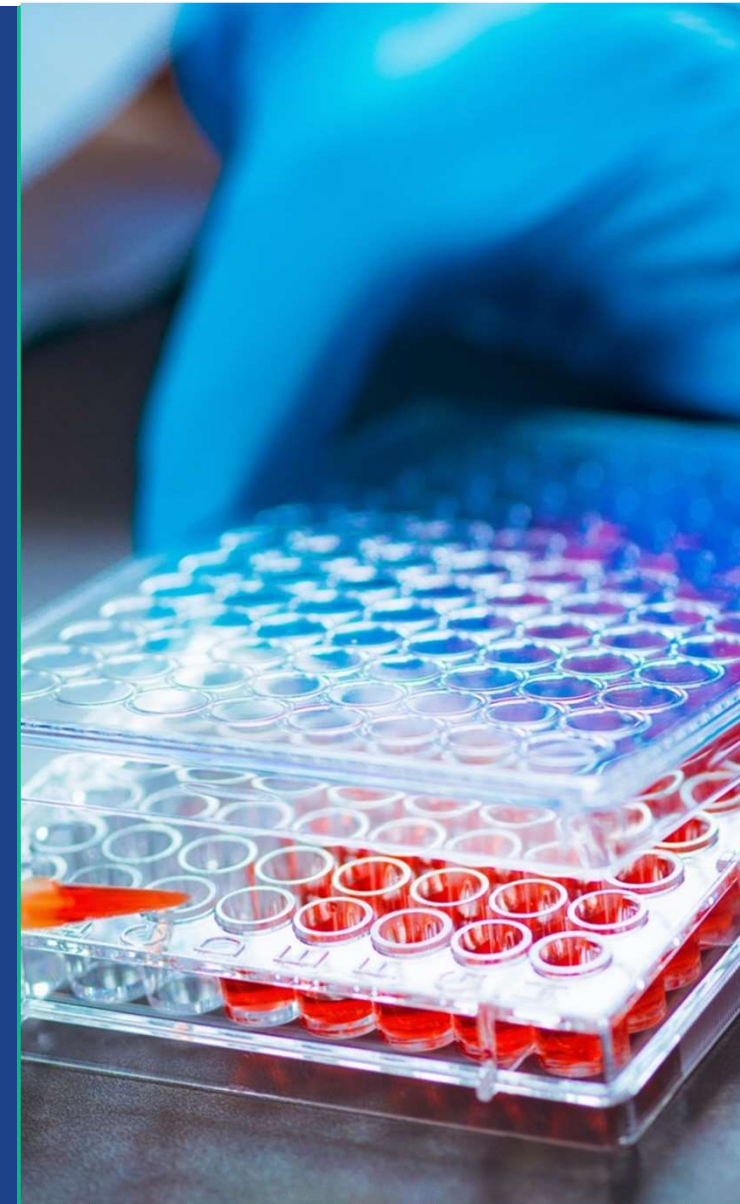
2. Employment Contract & Content

2.1 Upfront: Practical Tips

- Do not use templates of obscure origin!
- Do not use outdated templates!
- Many terms and conditions stipulated in employment contracts **cannot be changed unilaterally!**
- **Right to unilaterally change** terms and conditions of the employment contract must be expressly set out in the employment contract taking transparency and adequacy rule into consideration, e.g. transfer clauses regarding tasks and place of work

2.2 Conclusion

- Offer and acceptance



2. Employment Contract & Content

2.3 Form

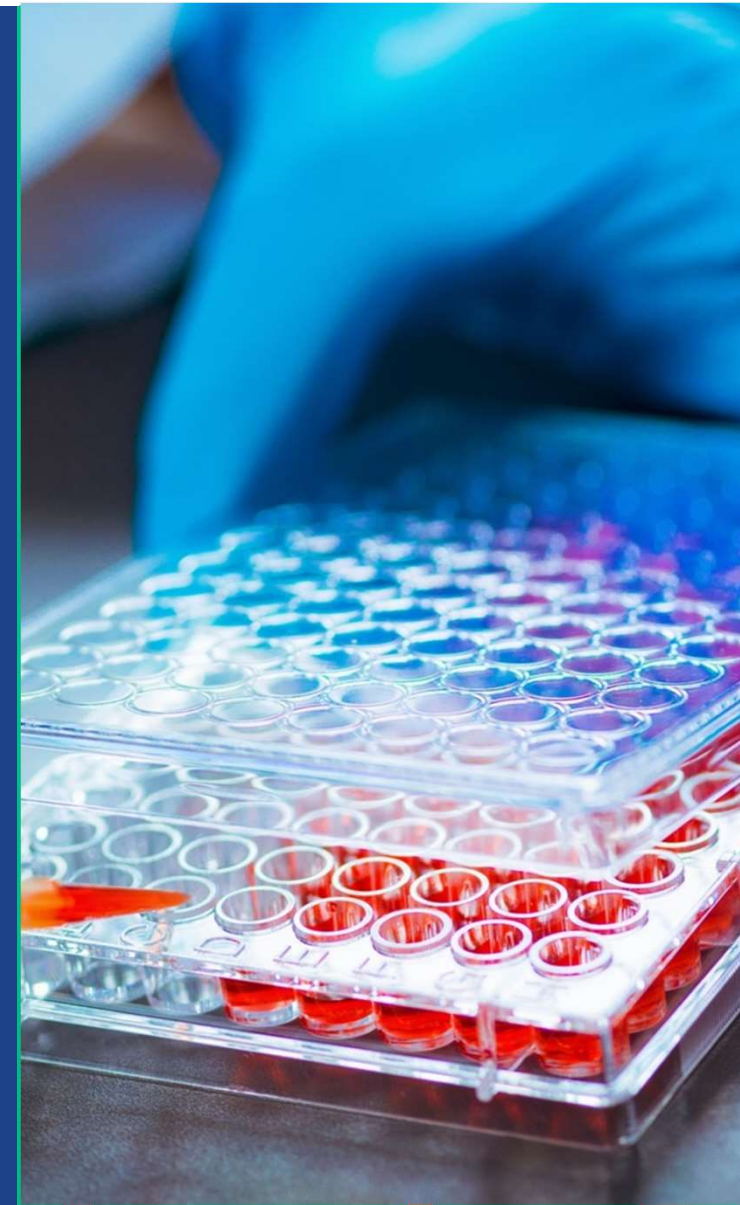
- **Basically, no formal requirements** (both orally and in written form admissible)
- Usually concluded in writing
- If not, no later than one month after the agreed upon commencement of the employment relationship the employer must record the essential contractual terms and provide employee with a copy
- Furthermore, certain provisions are only enforceable if agreed in **writing** (“wet-signature”), especially the limitation of the duration of an employment relationship and post-contractual non compete clauses.
- **Offer letters** can be used, but are not common practice.



2. Employment Contract & Content

2.4 Minimum Requirements in Terms of Content

- Name and address of the contracting parties
- Date of commencement of the employment relationship
- In the case of fixed-term employment: the end date or the foreseeable duration of the employment relationship
- Place of work or, if the employee is not to work at only one particular place of work, an indication that the employee may be employed at different places or may freely choose his place of work
- Brief description of the work to be performed by the employee
- If agreed, the duration of the probationary period
- Composition and amount of remuneration (including inter alia overtime pay, bonuses, allowances)
- Agreed working hours, agreed rest breaks and rest periods and, in the case of agreed shift work, the shift system, rhythm and change conditions



2. Employment Contract & Content

2.4 Minimum Requirements in Terms of Content

- Further details in the case of on-demand work
- If agreed, the possibility of overtime and its conditions
- Duration of the annual vacation
- Any entitlement to further training provided by the employer
- Special details in the case of a company pension plan
- Information on the termination procedure (requirement of a written form, notice periods, period for filing suit)
- Reference to the collective bargaining agreements, works agreements or service agreements applicable to the employment relationship

All the essential terms and conditions to be included in an employment contract are contained in the **Evidence Act (*Nachweisgesetz*)**.



2. Employment Contract & Content

2.5 Minimum Statutory Law

- Statutory maximum working time
- Work on Sundays or public holidays is generally prohibited
- Minimum wages
- Continuation of remuneration in case of sickness
- Minimum number of annual vacation days
- Minimum notice period

Clauses in employment contracts that violate minimum statutory law are invalid!



2. Employment Contract & Content

2.6 Working Time (Working Time Act)

- **Daily working hours** may not exceed 8 hours, i.e. 48 hours within a six-day week.
- Daily working hours may be **extended** to 10 hours if over 6 months or within 24 weeks an average of 8 hours is not exceeded .
- **Regular breaks** are required: from 6 to 9 working hours at least 30 minutes, 9 hours and more at least 45 minutes; i.e. employees should never work longer than 6 hours without a break
- Employees must have a **rest period** of at least 11 hours.
- **Work on Sundays or public holidays** is generally prohibited (exceptions for certain sectors).
- Special regulations for **night workers**
- **Violation** of the Working Time Act **triggers fines and personal liability** of managers.



2. Employment Contract & Content

2.7 Sickness and Sick Pay (Continuation of Remuneration Act)

- Employees are **released from duty to work** in case of sickness.
- Employees have a claim for **continued remuneration** (without any wage cuts) paid by employer for up to 6 weeks.
- **Requirements for sick pay**
 - Illness of the employee
 - Incapacity to work
 - Causal link between illness and incapacity
 - Employee blameless (not at fault)
 - Waiting time expired
- If sickness exceeds this 6-weeks period entitled to receive a **sickness allowance** paid by their statutory health insurance
 - Amounts to 70% of employee's normal pay
 - Maximum payment period: 78 weeks



2. Employment Contract & Content

2.8 Vacation (Federal Vacation Act)

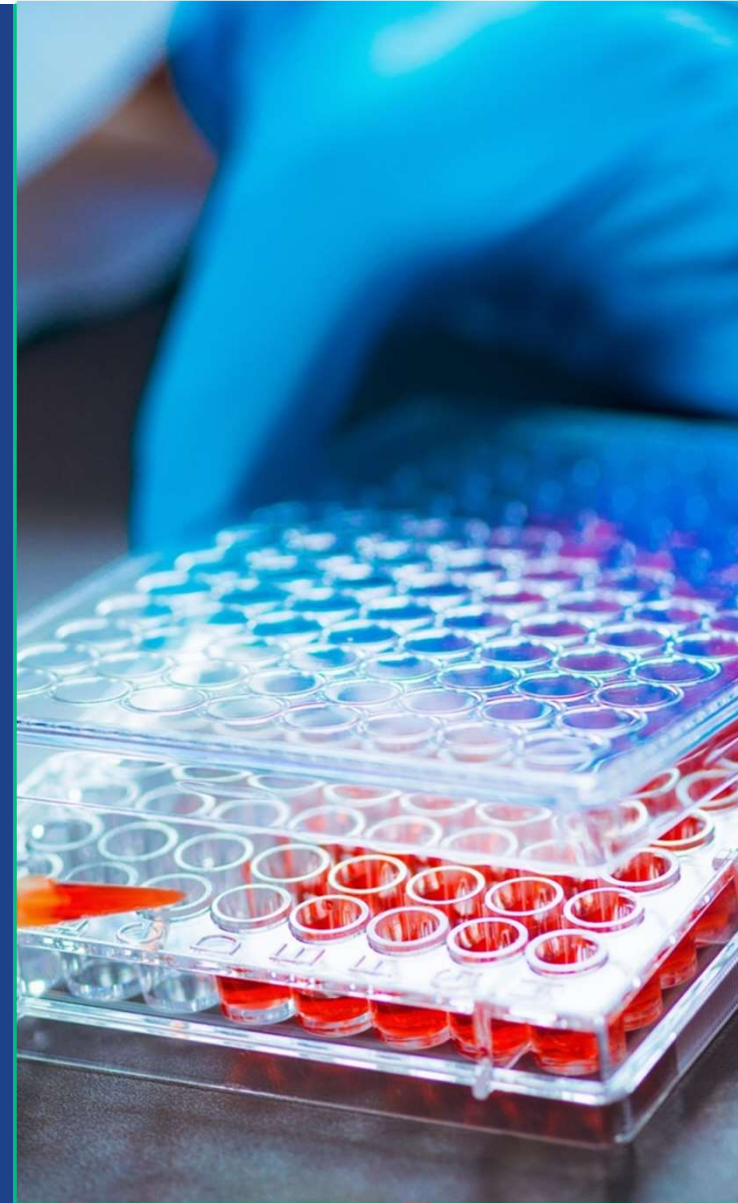
- Employer decides on granting vacation, but employee's requests must be taken into account
- **Minimum vacation** entitlement of 24 working days within a 6-day working week (4 weeks)
- Severely disabled people have **additional statutory vacation entitlement**
- Requirements for vacation entitlement
 - Employment relationship must last at least 1 month
 - Claim arises after expiration of a 6-months waiting period
- **Entitlement expires** at the end of the calendar year (transfer to 31 March of the following year in exceptional cases)
- New Case Law requires employer to inform employees to take their annual vacation. If not, entitlement shall not forfeit.
- **Compensation payment** in case of termination of employment relationship



2. Employment Contract & Content

2.9 Fixed-Term (Part-Time and Limited Term Employment Act)

- Must be agreed in **writing** before commencement of work
- **Violation** of written form requirement or provisions laid down in the Part-Time and Limited Term Employment Act leads to **unlimited** employment relationship!
- Fixed term limited by **material reason** or by **calendar** (without material reason)



3. Termination of Employment Relationships

3.1 General Principles

- Dismissal vs. Termination Agreement
- Must be declared clearly and unambiguously
- **Written form**, i.e. original “wet” signature (no pdf, fax or copy)
 - Applies to both unilateral dismissal and mutual termination agreement
 - Violation is a formal defect which leads to invalidity
- Dismissal without prior information of **works council** is invalid!
- Dismissal only becomes effective once it is **delivered to the recipient** (proof of delivery)



3. Termination of Employment Relationships

3.2 Types

- **Ordinary Dismissal**
 - Observance of applicable notice period
 - Employment relationship ends after expiration of the dismissal notice period
 - Validity heavily influenced by applicability of Protection Against Dismissal Act!
- **Extraordinary Dismissal (Dismissal for Cause)**
 - Employment relationship ends immediately without observing a dismissal notice period
 - Validity requires existence of import reason, i.e. circumstances which render it unreasonable to continue the employment relationship until the notice period has elapsed
 - Must be declared within two weeks after obtaining knowledge of underlying facts



3. Termination of Employment Relationships

3.3 Protection Against Dismissal Act

- **Applicability**
 - Number of regularly employed employees
 - Waiting Period
- **Reasons for Dismissals**
 - Conduct-related dismissals
 - Person-related dismissals
 - Dismissal for operational reasons



3. Termination of Employment Relationships

3.4 Special Protection Against Dismissal

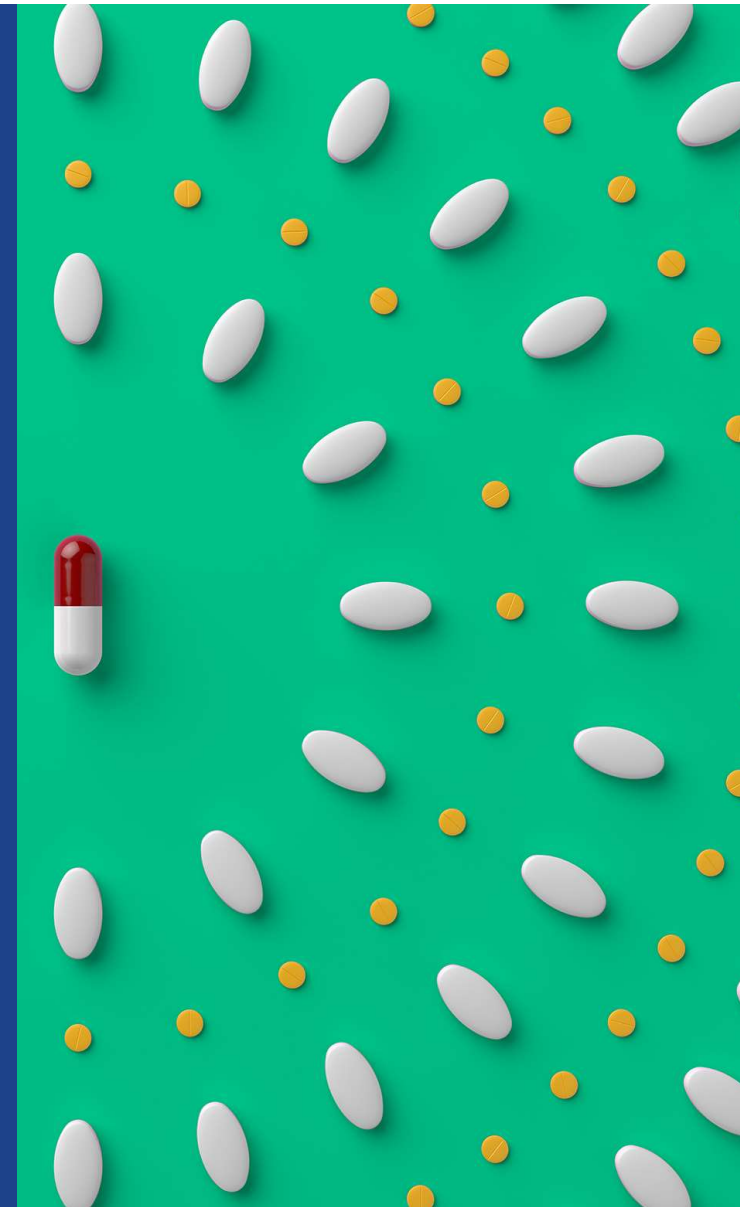
- Maternity leave
- Parental leave
- Persons with a disability
- Works council members

Consent of competent authority required before issuance of dismissal letter!



4. Social Security

- Germany's statutory social security system forces employees to pay **social security contributions**.
- **Five branches of the social security system:** unemployment insurance, health insurance, long-term care insurance, retirement pension insurance and accident insurance
- Social security is contributed to in **equal parts by employer and employee** (except for accident insurance, which is contribution-free for the insured employees because it is only financed by the employers).
- **Employer deducts** employee's part from his or her salary.
- Total social security contributions (sum of employer's and employee's amounts, calculated as a percentage of the gross income) are **collected by each employee's health insurance and paid by the employer**.



5. Income Tax

- Employees pay income tax on their income.
- Tax progressively graduates depending on the gross income.
- Employer is responsible for forwarding the income tax to the tax authority.



6. Employee Representation

- Employees have **freedom of association and representation** (guaranteed by German constitution)
- **Levels of representation:**
 - Representation by works council
 - Representation on corporate level
 - Representation by trade / labor unions
- Each level of representation **serves the employees' right to participation.**



Any questions?



Europa > Mittlerer Osten > Asien

taylorwessing.com

© Taylor Wessing 2022

Diese Publikation stellt keine Rechtsberatung dar. Die unter der Bezeichnung Taylor Wessing tätigen Einheiten handeln unter einem gemeinsamen Markennamen, sind jedoch rechtlich unabhängig voneinander; sie sind Mitglieder des Taylor Wessing Vereins bzw. mit einem solchen Mitglied verbunden. Der Taylor Wessing Verein selbst erbringt keine rechtlichen Dienstleistungen. Weiterführende Informationen sind in unserem Impressum unter taylorwessing.com/de/legal/regulatory-information zu finden.