

10 Pitfalls

when taking paid time off



German employees have various entitlements regarding paid time off (PTO). In addition to a statutory vacation entitlement, there are other statutory entitlements, with specific features, which – in some cases – differ quite significantly from other jurisdictions. Therefore, it is important for international companies that do business in Germany to be familiar with some basic issues:

1 There is a statutory vacation entitlement

Employees have to be granted a minimum amount of 24 days of paid vacation per year after completing six months of service, based on a 6-day working week. Since most employees work five days a week, the legal minimum vacation is 20 working days a year for most German employees. Nevertheless, it is standard to grant additional contractual vacation days on top. Usually, employment contracts provide for a higher number (25 to 30 days in total) of paid vacation days. Employers must therefore always differentiate between statutory vacation leave and contractual additional vacation leave in employment contracts as the statutory rules only apply to the statutory vacation entitlements.

vacation is carried over to the new calendar year if the employee was not able to take his/her vacation days in full during the calendar year. If the carried-over vacation is not taken by March 31 of the following year, it expires at the end of March 31 unless the employee was not able to take it due to long-term sickness (c.f. below under number 3.)

2 Vacation transfer possible but not standard

As a basic rule, vacation entitlements expire at the end of each calendar year if they are not taken by year-end. However, this requires the employer to inform the employee in the required time before the end of the year on how many vacation days he/she still has in the current calendar year and to request him/her to take them in the current calendar year. Providing notice of the possible forfeiture is also required. In the case of operational reasons or personal reasons relating to the employee, however,

3 Special vacation rules on long-term illness

An exemption of the expiry of the statutory vacation entitlement at the end of March 31 of the following year applies in case of long-term illness. Statutory vacation entitlements expire 15 months after the end of the vacation year in the case of continued/on-going long-term sickness of an employee. However, the employer can ensure that contractual vacation entitlements expire at the end of the respective calendar year by diligent contract drafting.

4 Vacation compensation at the end of the employment

When an employment relationship ends, there is no automatic requirement to pay out unused vacation days. Due to the concept of recuperation in German labour law, vacation compensation only kicks in when there is no possibility of taking the vacation prior to the end of the employment.

In contrast, the parties of an employment contract cannot agree on financial compensation during the ongoing employment relationship. The employer can again differentiate between statutory and contractual (additional) leave. Hence, diligent contract drafting can ensure that only unused statutory vacation days are compensated upon termination of the employment relationship.

5 Statutory sick leave with continued remuneration

Employees are entitled to a consecutive six weeks pay from the employer for illness during a calendar year if the employment relationship has lasted for at least four consecutive weeks. After a consecutive illness of six weeks, State Insurance pays a reduced sum to the employee (*Krankengeld*). The *Krankengeld* amounts to around 70% of an employee's remuneration. The maximum period for payment of the allowance is 78 weeks. However, the employer should bear in mind that the initial six-week period may begin again with the onset of a new illness if it is not due to the same underlying sickness. In the case that the employee suffers from the same basic underlying sickness, it will recommence after six months have elapsed since the end of the last sick leave or one year has elapsed since the beginning of the first sick leave.

6 Public Holidays are always paid

Public Holidays are subject to each of the Federal States in Germany. On Public Holidays, employees are usually not allowed to work, but are entitled to receive their remuneration. Working is only allowed under certain circumstances. The number of statutory Public Holidays varies from region to region between nine (9) and fourteen (14) days. Therefore, when taking into account Public Holidays, the employer must consider the respective location of the employee. This is especially relevant for employees who are working from home/remote as the location of the employer is not decisive.

7 Statutory maternity and parental leave

There is a fully paid ban on work starting six weeks before the expected due date and up to eight weeks after the actual birth date (extended to 12 weeks for premature or multiple births). In the time before the expected due date, pregnant employees may opt to work regardless. During pregnancy and until four months after the childbirth and during parental leave, the employer may not terminate the employment relationship unless the competent public authorities have granted their prior consent. The employer is entitled to reduce vacation entitlement during parental leave by one-twelfth for each full calendar month of parental leave. The employee needs to be notified about this reduction before a possible end of employment. It should be noted that a reduction of vacation entitlement is not allowed during maternity leave.

8 Statutory care leave

Employees are entitled to work part-time to care for a close relative (e.g. parents, partner, children) for a maximum of six months. The employer may not terminate the employment relationship without the consent of the competent authority from the time of the announcement of the care until the end of care leave.

9 No statutory rules on sabbaticals

Sabbaticals are becoming more and more popular. As there are no statutory rules, there are different models that the employer and employee can agree on, beginning from only a few unpaid weeks up to a longer special leave between three months up to one year and different options of continued remuneration. Often, a sabbatical takes place on the basis of a working time model, in which the employee works full time but for a reduced amount of money before the sabbatical. During the sabbatical, the employer continues to pay the salary to the employee on the basis of "saved

money" prior to the sabbatical, including contributions to health, nursing care and pension insurance. In any case, the parties should always check social security implications, as an employee loses that if their unpaid sabbatical lasts longer than one month.

the PTO regulations. It is therefore always recommendable to clearly define the unlimited PTO in Germany, either in the employment agreement or within a policy where the employee is required to sign an acknowledgment of receipt and acceptance.

10 Also possible: Unlimited PTO

More and more, international companies also want to offer unlimited PTO in Germany which is possible when keeping few things in mind, such as differentiation between statutory and contractual (unlimited) vacation, exemption of sick leave and the right to take unlimited PTO only after approval by the employer in its reasonable discretion in order to avoid unreasonable use of



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and litigation, while ensuring compliance and risk mitigation. With deep expertise in restructuring, corporate transactions, and works constitution law, Christian and his team support smooth workforce transitions and offer strong legal protection—both in and out of court.

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