La Kanzlei

Hiring of employees in Germany

Arbeitsrecht

Summary

- Is it necessary to set up a company in Germany to be able to hire employees?
- Is it wise to opt for foreign employment law?
- What are the standard working hours in Germany?
- Is it possible to sign fixed-term employment contracts in Germany?
- What are the rules regarding the probationary period in Germany?
- What are the salary costs? What costs are involved in an ongoing employment relationship?

[1] Is it necessary to set up a company in Germany to be able to hire employees?

It is not necessary to set up a company in Germany to hire employees in Germany. In fact, a foreign company can conclude an employment agreement with an employee based in Germany.

In such cases, however, care must be taken to ensure that signing the employment contract does not result in recognition of a permanent establishment in Germany. In this respect, the employer must take care to comply with a number of essential rules, such as not giving the employee the power to conclude contracts.

[2] Is it wise to opt for foreign employment law?

NO:

The law establishes the principle that the parties are free to choose the law applicable to their employment contract. Thus, the foreign company and the employee based in Germany may freely opt for either foreign or German law.

In any event, it is strongly recommended that the law applicable to the employment relationship be explicitly stated in the employment contract.

Foreign companies sometimes opt for the application of the employment law of their country. They justify this choice by the fact that they and their advisers do not have the necessary knowledge of the German law and prefer to apply their legislation, as they are more familiar with it. However, mandatory employee-protective provisions of German law apply if the workplace is in Germany even if a foreign law is chosen. Thus, it is recommended to explicitly choose German law in the contract.

[3] What are the standard working hours in Germany?

In Germany, the working week usually consists of 40 hours. Only hours worked in excess of this amount are considered overtime. Provided that it is ensured that only 4 hours of overtime per week are covered by the monthly salary.

[4] Is it possible to sign fixed-term employment contracts in Germany?

YES:

German employment law allows employment contracts to be limited in time for a maximum period of up to two years without the need of a specific reason. Provided that the employer can justify the use of a fixed-term contract (e. g. due to the replacement of an employee, temporary increase in activity etc.), it is also possible to agree on a longer fixed-term contract.

[5] What are the rules regarding the probationary period in Germany?

The statutory probationary period is 6 months, regardless of the employee's status. During the probationary period, the employment contract may be terminated from both parties with two weeks' notice.

[6] What are the salary costs? What costs are involved in an ongoing employment relationship?

Regardless of the law applicable to the employment contract, the amount of the agreed salary will be subject to negotiation between the parties during the recruitment process, subject to compliance with the legal minimum wage of 12,41 euros per hour as from 1 January 2024.

In order to determine the total salary related costs to be borne by the employer, it is necessary to take into account the amount of social security contributions to be paid.

The amount of social security contributions depends on the employee's status:

In the event that the employee is covered by social security in Germany (standard situation), the costs are determined by the level of German social security contributions, which on average is 19.5 % employer’s contribution and 21 % employee’s contribution. Beyond that, there is an exemption from employer's contributions on the part of the gross annual salary which exceeds the contribution assessment limit for statutory pension and/or health insurance.

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