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Disabled employees and obligations of the German employer

Arbeitsrecht



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Obligation to employ severely disabled persons

German law requires employers to hire a quota of disabled persons. In companies with 20 or more employees, the proportion of severely disabled employees must be of at least 5% of the workforce. In a company with less than 40 workplaces, the employer must employ at least one severely disabled employee (or equivalent). If the company has between 40 and 60 workplaces, the employer must employ at least two severely disabled persons.

A severely disabled person is a person who has been recognized as having a degree of disability of 50 or more or who has a degree of disability of between 30 and 50 and has asked to be treated equally with severely disabled persons because of their difficulties in finding a job (= equivalently to a severely disabled employee).

In case of non-compliance with this quota, the employer must pay the following financial compensation to the competent administrative authority (Integration or Inclusion agency Integrationsamt or Inklusionsamt):

- Quota 3 % < 5 % : 125 euros per missing position
- Quota 2 < 3 %: 220 euros per missing position
- Quota < 2 %: 320 euros per missing position

Appointment of an "Inclusion Officer" (Inklusionsbeauftragter)

Every employer who employs at least one severely disabled employee, is obliged to appoint an inclusion officer (Inklusionsbeauftragter) whose main task is to represent the employer vis-à-vis the representative body for severely disabled employees (Schwerbehindertenvertretung) within the company. A failure to do so can result in a fine of up to 10,000 euros.

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Representative body for severely disabled employees

The representative body for severely disabled employees (Schwerbehindertenvertretung) can be elected (on the initiative of at least three severely disabled employees, the works council or the administrative authority) for a term of four years in all companies employing at least five severely disabled employees or employees with the same status. It is composed of a "person of trust" (Vertrauensperson) and his deputy, who do not have to be severely disabled employees, and it has similar functions and prerogatives as the works council (Betriebsrat).

The Schwerbehindertenvertretung must be consulted in addition to the works council before each dismissal of a severely disabled employee or an employee with the same status.

Additional leave

Each severely disabled employee is entitled to an additional statutory leave of five working days per year (prorated in case of part-time work).

Working conditions

The workspace must be adapted to the specific needs of the severely disabled employee (e.g. access to the workplace; special chairs).

Furthermore, the employee has the possibility to ask to be exempted from overtime.

Specific protection against dismissal

A severely disabled employee or an employee with the same status benefits from special protection against dismissal if they have at least six months' seniority. Before any dismissal measure, the employer must obtain the authorization of the administration (Integrationsamt or Inklusionsamt) which will verify that this measure is not related to the disability.

Practical recommendation

Make sure that you comply with your obligation to employ severely disabled employees. As the employer is responsible for the organization of the safety and health protection of the employees, it is important, in particular in the context of the employment of a disabled employee, to pay attention to the workload and to the adjustment of the workplace, the environment, the work organization and the working hours.

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