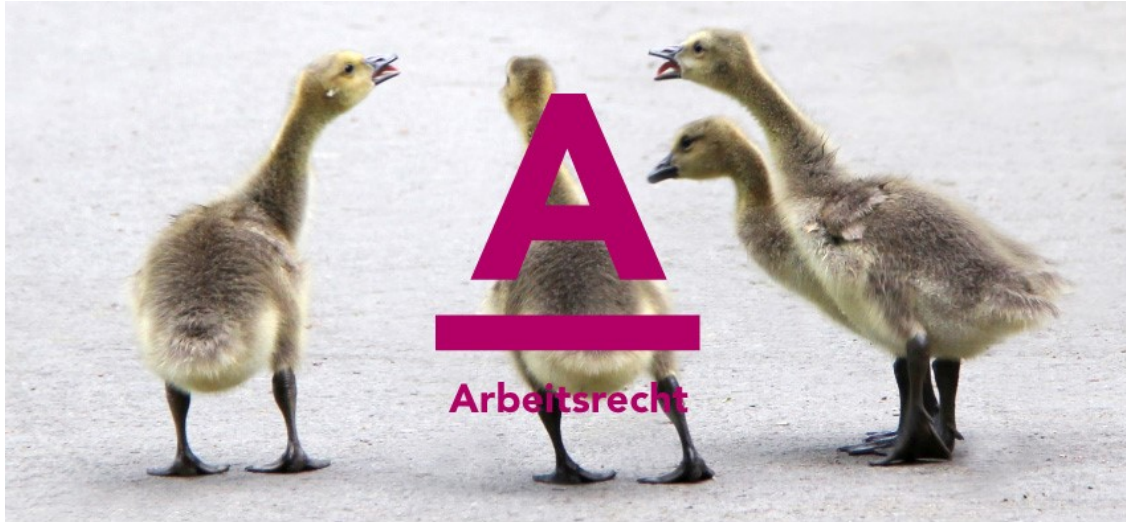


Mannheim/Frankfurt/München, June 2022

Urgent: Employers' Actions Required!



Late at night on June 23, 2022, the Bundestag has passed amendments to the Documentation Act ("Nachweisgesetz", NachwG). Until now, the Documentation Act has led a rather shadowy existence. From this, the Bundestag yesterday has now lifted it into the limelight. The amendments will apply as early as August 1, 2022!

Adaptation of sample employment contracts

Employers must check the employment contract templates used quickly, and most likely will have to adapt them. In addition to information that was already mentioned so far in Section 2 NachwG and was already included in most employment contracts, employment contracts must now also include the following points specifically:

REMUNERATION

In addition to the fixed monthly remuneration, all special payments, bonuses and, above all, remuneration for overtime must be expressly covered. To this end, it must be stated when the respective payments are due. Until now, this provision has often been missing for overtime remuneration. On the other hand, the necessary indication of the type of payment is usually not a problem, as bank transfers are now usually the standard.

WORKING TIME

It has been standard practice in the past to specify the working hours in the employment contract, but now agreed rest breaks and rest periods must also be specified and, in the case of shift work, the shift system, the shift rhythm and the conditions for shift changes must be described - something that was often not expressly regulated in companies without a works council.

OVERTIME

In addition to regulating the remuneration of overtime, from August 1, 2022 it is also mandatory to state that overtime can be ordered, and the conditions for ordering it must be regulated, as well. In the past, in some cases, only the remuneration for overtime was mentioned in the contract; this must now be changed.

TERMINATION

It is completely new that, in addition to the notice period, the procedure to be followed in the event of termination, i.e. at least the requirement for the written form, the possibility of bringing an action and the period for bringing an action under Section 4 of the Protection against Unfair Dismissals Act must also be mentioned in the employment contract.

DOES THIS HAVE TIME UNTIL AFTER THE VACATION?

The changes must be implemented in the sample contract in the short term. It is not sufficient to hand over a previous sample for a new hire to the supervisor for signing on August 3, for example, because you are on vacation until August 10. In the future, the Documentation Act will provide for staged deadlines for the documentation of working conditions. However, to avoid sources of error, it is advisable to use the shortest deadline as a guide. The contract documenting the working conditions should be signed, or the documentation of the working conditions handed over, before or on the first day of work. If something changes, the change; as well, must be communicated and documented on the day it takes effect, unless it results from a collective bargaining agreement or a works agreement. Employees already employed before August 1, 2022 do not need a new contract in every case, but they can demand that they receive documentation on the working conditions in accordance with Section 2 NachwG within seven days.

ELECTRONIC FORM OR WRITTEN FORM?

Even before now, a "employment contract in writing" could replace separate documentation of contractual terms and conditions.

The intriguing question remains whether this employment contract must comply with the strict written form requirement ("wet ink"). For the mere documentation and for the time limitation of an employment contract (before starting work!), the answer is a clear yes. But will employment contracts concluded in text form or by electronic means lead to an administrative fine in the future if they are not followed up by an original signed version or documentation within the time limits of the Documentation Act? The employer is only safe if he works with originals of the employment contract and, if necessary, the supplementary documentation, until clarification. Since warnings against senseless bureaucracy and waste of paper and energy were ignored by the legislator, employers are not spared this administrative burden for the time being.

AND WHAT ARE THE CONSEQUENCES OF NON-COMPLIANCE?

Until now, the consequences of disregarding the Documentation Act have been limited to rather theoretical claims for damages or evidence relief against the employer in a lawsuit. But that was not enough for the legislator. As of August 1, 2022, failure to document working conditions, or failure to do so in a timely manner, or to do so at all, or to do so in the manner prescribed, will be an administrative offense subject to a fine of up to EUR 2,000.00.

Therefore, there is pressure to act. If your sample employment contracts are not updated by August 1, 2022, you run the risk of being fined.

Please feel free to contact us with any questions or to discuss implementation. Our employment lawyers in the HR and Employment Law Practice Group at RITTERSHAUS will be happy to assist you.

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RITTERSHAUS

Rechtsanwälte Partnerschaftsgesellschaft

Büro Mannheim
Harrlachweg 4
68163 Mannheim
Tel.: +49 621 4256 0
Fax: +49 621 4256 250

Büro Frankfurt a. M.
Bockenheimer Landstraße 77
60325 Frankfurt/Main
Tel.: +49 69 274040 0
Fax: +49 69 274040 250

Büro München
Barer Straße 7
80333 München
Tel.: +49 89 121405 0
Fax: +49 89 121405 250

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