



An Introduction to German Employment Law

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SaaS companies looking
to expand to Germany

Powering Hypergrowth™

Introduction

We know that expanding internationally can be a challenge and a particular area that requires a lot of time, effort and attention is employment law.

One of the highest growth areas for software companies expanding in EMEA, is Germany, so the aim of this guide is to explore some key areas of German employment law that you should be aware of.

From hiring and holidays to contracts and benefits, we highlight what you need to know when you're looking to expand your business in Germany.



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What is German Employment Law?

Employment laws in Germany are vast - spread over a number of different legislations, the laws are based on a broad number of factors which are influenced heavily by case law.

This means that employment laws in Germany are subject to change from influential cases, whilst also being heavily guided by EU regulations.

So, with these changes and complexities comes the need for investment of time, money and effort to remain compliant.

* Please note that Strive Sales are not qualified law professionals, and this document is intended to be used as an introduction and overview to German employment law. Specialist legal advice should be taken where needed. Strive Sales takes no responsibility for the use of information within this document beyond an initial overview.

Hiring factors in Germany

One of the biggest factors when it comes to building a team in Germany is that there's no requirement for a local entity, hence the attraction for businesses to start operating across the region.

So, what does this mean in practice, and what are some of the recommended and required steps to take?

- A foreign employer may close a contract directly with an employee locally.
- **Recommended practice:** You may consider setting up a subsidiary body which acts as the employer. For example, a limited liability company would be recognised as "GmbH".
- You may want to consider engaging with a local payroll agency - however, this is only recommended for a short period of time. Company options include "UG", or you could go through a 'Employer of Record' service. Reach out to a member of the Strive team for recommendations or see the below links to access discounted rates with three of the market leaders:
- However, you may also use other EU-company forms under the EU Freedom of Establishment.
- Required: You must submit an application at the Federal Employment Agency for a Company Registration Number.

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*Please quote Strive at point of contact

What should you include in an employment contract?

As in most regions, there are a number of requirements that must be adhered to and included in any written employment contract. These include:

- The names and addresses of parties involved (i.e. the company and the employee)
- The employee's place of work, once employment begins
- Date which the employment formally commences
- Estimated duration of employment (for fixed term contracts only)
- A brief job description
- Details on pay or remuneration
- Employee's working hours
- Details on holiday and holiday pay
- Employee's notice period

It is recommended for contracts to be written in German. You can write contracts bilingually, however the German version is the version which will be legally binding.



What are the Anti-Discrimination Laws?

The General Equal Treatment Act (“AGG”) outlines unlawful treatment on the grounds of the following characteristics, from the application phase to the end of the employment period.

- | | |
|-----------------|----------------------|
| • Race | • Ideology |
| • Ethnic origin | • Disability |
| • Sex | • Age |
| • Religion | • Sexual orientation |



Types of unlawful discrimination

There are two types of discrimination which are prohibited under the General Equal Treatment Act:

- Direct discrimination, which occurs if a person is subject to less favourable treatment than others in a similar situation, role or capacity, as a result of a protected characteristic.
- Indirect discrimination, which occurs if set procedures discriminate against people in a particular way as a result of their characteristics.

What are the employee's rights?

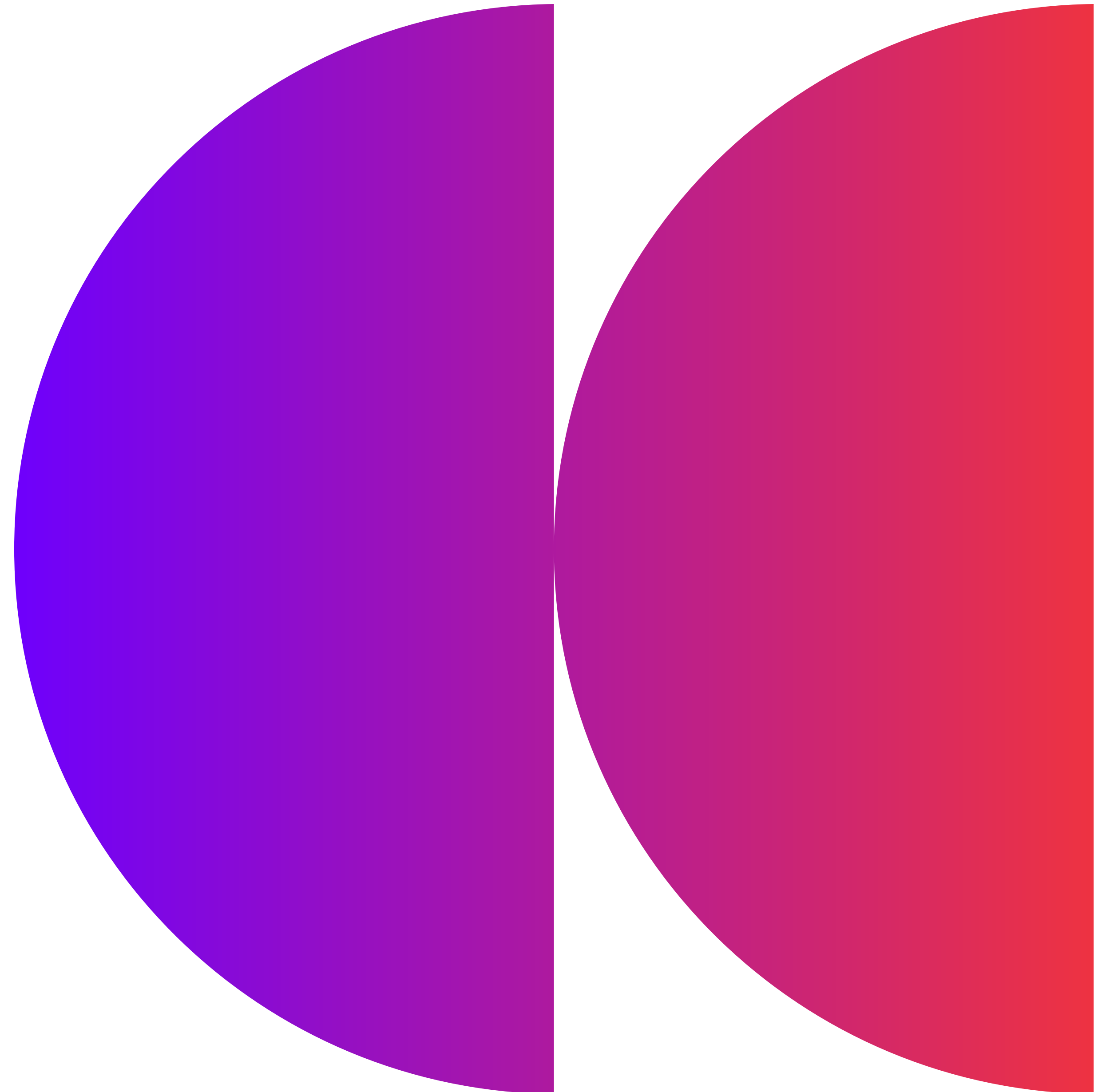
- Employees have the right to complain to their manager or another responsible body in regards to discriminatory practice.
- Employees have the right to refuse to work if they believe they are subject to discriminatory practices.
- The employee has the right to raise a claim for damages.
- The employee also has the right to commence further proceedings, such as a claim based on the German Civil Code (BGB).

In relation to the above, the employer is obliged to implement measures which aim to protect the employee from discriminatory practice.



Guidance on working hours

- The allocation of working hours (including the duration) can be agreed within the statutory agreement framework.
- Working hours and required provisions are informed by the Working Hours Act (“ArbZG”) and the Youth Labor Law (“JArbSchG”), and particular legislation for specific professions.
- The legislation around working hours should be adhered to for all employees and apprentices.
- Executive employees are excluded from the guidance set by the legislation.
- Adherence to law is monitored by local authorities, whilst infractions are dealt with through sanctions.
- Working hours per day should not generally exceed eight hours.
- Guidance permits employers to set working hours of **48 hours** within a 6-day week for employees.
- The daily working hours can be extended to ten hours if, over six months or within 24 weeks, an average of eight hours is not exceeded.
- Employees are entitled to regular breaks. If working between six to nine working hours, a 30 minute break should be given (at least); if working nine hours and more a 45 minute break should be provided (at least).
- Employee must have a rest period of at least eleven hours between working shifts.
- Working is prohibited on Sundays and public holidays, however there are exceptions for certain roles.



What are the holiday allowances?

- **National Holidays**
 - Reunification Day
- **Public Holidays**
 - New Year's Day
 - Easter Monday
 - Labor Day
 - Ascension Day
 - Whit Monday
- Additional holidays in some states
- In general working is not allowed
- Remuneration must be paid if holiday would be a regular working day



What time off are employees entitled to?

Sickness/Sick Pay:

- These guidelines should be followed if an employee is relieved from work in the event of illness.
- The continuation of remuneration is outlined by the Continuation of Remuneration Act (“EFZG”).
- The employee is entitled to continued remuneration, in full, paid by the employer for up to six weeks.

For the employee to receive the remuneration during the sick period, certain requirements should be present, including:

- The illness of the employee should be present, and should be the cause of their inability to work.
- The employee should not be at fault for the illness.
- The allocated waiting time should have expired (for example, four weeks after the start of their employment).

Did you know:

On average, German workers take **18.3 days** of sick leave a year.



Holiday/vacation pay

- Vacation time is outlined by the Federal Vacation Entitlement Act (“BUrlG”).
- An employer is required to relieve employees from work for a set time, and is obliged to pay full remuneration during the period in which the employee is away.
- An employer will ultimately decide on granting vacation time. However, the employee’s request should be fairly considered.
- For employees to qualify for paid vacation, their employment must last at least one month.

For a five-day working week, the minimum statutory vacation allowance is 20 working days plus public holidays.



What benefits should be awarded?

- Social benefits are widely regulated by the state and are recognised as ‘social insurance’ locally.
- All employees (dependant on work performed) become part of the outlined system.
- The main provisions are outlined in a variety of Social Security Codes (‘SGB’).
- There are 5 classes of social insurances, including:
 - Promotion of work and unemployment insurance (SGB II, III)
 - Health insurance (SGB V)
 - Nursing care insurance (SGB XI)
 - Pension insurance (SGB VI)
 - Accident insurance (SGB VII)

• Maternity Leave

- The employment of pregnant and nursing individuals is regulated under the Maternity Leave Act (“MuSchG”).
- During the **six weeks before** the calculated date of birth, pregnant individuals are prohibited from working, unless the employee has explicitly declared their wish to work.
- New mothers are prohibited from working in the **eight weeks immediately after** giving birth. This is non-negotiable.
- The **maternity leave pay** is the same as the average gross pay before the maternity protection period. However, it is dependent on the average gross pay of the 3 months prior to the maternity period.
- An employee with statutory health insurance receives maternity pay from the health insurance fund for

the 14 weeks period (up to EUR 13 per day). The employer supplements the payment to meet the previous net salary amount.

• Paternity leave

- The entitlement to parental leave is governed under the Parental Leave Act (“BEEG”).
- Employees are entitled to parental leave until their child reaches 3 years of age.
- A portion of parental leave (up to 24 months) can be taken between the ages of 3-8.
- Both parents can take parental leave together entirely, or at certain individual times.

- Employees **must** submit a **written** request, no later than seven weeks prior to the start of the parental leave period, and explicitly state which periods are intended for parental leave within a timeframe of two years.
- Parents may also be entitled to **paternity leave pay**, which is paid by the state. To receive this, employees must make the application directly to the state.

What is the legislation around termination of employment?

The Protection Against Dismissal Act (“KSchG”) is designed to cover organisations with 10 or less full-time staff. **This means that legislation becomes more complex and needs further consideration once you reach 11 or more employees.**

The Protection Against Dismissal Act (“KSchG”) protects:

- 10 employees (at least) on a regular basis, excluding managing director and trainees.
- An existing employment relationship for more than 6 consecutive month.
- Protection covers employees and executive employees.
- Managing directors and members of representative bodies are not protected under this act.

Furthermore, under this act, a dismissal is justified upon:

- Personal grounds
- Conduct related grounds
- Operational grounds, including redundancy.



Grounds for dismissal

Personal grounds require that the employee is no longer in a position to carry out the duties of employment in a defined period in the future in whole or in part, due to personal abilities, attributes or attitude, and that there is no other free position of employment within the firm where the deficiencies would not be evident.

- The employer should have carried out all reasonable efforts to find another role or to change the current job, so that the personal reasons no longer impact the performance.
- The most frequent reason for personal grounds for dismissal include illness and low performance.

Dismissal based on **conduct related grounds** requires evidence that the employee is acting in breach of their obligations in a situation where they could have acted in accordance with correct behaviour.

- It must be no longer reasonable for the employer to continue the employment of the individual in question.
- The dismissal requires a defined forecast that the employee will not comply with set obligations in a certain period.
- The employer must evidence given warnings made in comparable cases (except in cases which highlight severe breaches of trust, such as fraud).

Dismissal based on **operational grounds** are only justified if there are compelling reasons such as company reorganisations or intensification of work required, which are classed as internal reasons, or external reasons such as decline in demand for products or services offered.

- The reasons on which the decision is based must cause a position to be removed from a team structure (such as the closure of a business or specific department).
- The dismissal should only be made if no other comparable positions in the organisation are available.
- If a number of employees are subject to dismissal, a social selection must be carried out.

Extraordinary dismissal without notice is only justified if there is a vital reason for the dismissal.

- The employer must announce the dismissal within two weeks of the reason for dismissal becoming apparent.
- Circumstances must be so severe that it would be unreasonable to expect the employer to continue the individual's employment, such as cases of theft, inappropriate violent, sexual or threatening behaviour.
- Dismissal based on suspicion is only justified if indications are incontrovertible.
- The behaviour or reason for dismissal must be discussed with the employee in question prior to dismissal.

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