

Employment Germany

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BREXIT - Why should international enterprises leave the UK for Germany?

Even though the date for the UK's formal exit from the EU has not been set and the specific consequences of this step remain unclear, it is certain that international enterprises resident in the UK must prepare for major changes. Hence, the impact of Brexit and the option to relocate should be considered and examined today.

Economists agree that, post-Brexit, the UK will be less attractive as a business location. For example, non-EU companies will no longer have access to the EU's single market via their London subsidiaries. Banks will most likely need additional permits to export their financial services from the UK to the EU countries which will eventually affect the liquidity of the UK's financial market and the stability of the British Pound.

Considering the uncertainties and the many open questions in the wake of the Brexit referendum, it must certainly be expected that many international companies will withdraw from the UK and look for a new home base in one of the remaining EU member states. Germany is a competitive business location and offers many advantages.

Local labor law often plays a considerable role for companies in their choice of location. In the following, we would like to highlight the benefits Germany offers from a labor-law perspective and at the same time dispel five labor-law myths that may still be keeping some companies from relocating to Germany.

A. Three reasons that make Germany attractive from a labor-law perspective:

1. There is no statutory entitlement to severance pay in case of a termination

It is not true that German employers are obliged to make severance payments to employees in case of a termination. German labor law does not provide for a statutory entitlement to severance pay on the part of the employee. While severance payments are, in fact, often discussed and negotiated in the course of termination protection disputes, there is no general statutory obligation on the part of the employer to actually make a severance payment upon terminating the employment relationship.

There are many other European countries where this is different. In countries like Ireland, Hungary, Portugal, Poland, the Czech Republic, France and Italy, employees do have a statutory claim to a guaranteed severance payment, at least in case of a termination for compelling business reasons.

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The average costs incurred for terminating an employment relationship are considerably lower in Germany than in other EU countries like e.g. Italy, Belgium, Sweden or France.

2. Functional and comparatively time-efficient legal system

Proceedings before German labor courts have to be conducted in accordance with the so-called "principle of urgency". In particular, labor courts are obliged to give termination protection proceedings top priority. The German Labor Court Act fosters and, hence, requires, a timely execution (and, hence, settling) of labor court proceedings. The legislator has set limits to the arbitrariness of judges and the excessive length of proceedings which are, in most cases, adhered to in Germany. Hence, first instance labor court proceedings in Germany only take three months on average.

This clearly makes Germany one of the "fastest" litigating countries in the EU. In comparison, labor court proceedings in France take more than one year on average.

3. Right to strike

Even though recent headlines suggest otherwise, the right to strike is not as strong in Germany as in many other EU countries. In Germany, the general obligation to keep peace applies. A strike must be proportionate and may only be used as a last resort. "Wild strikes" i.e. strikes being led without the union's knowledge or approval are not admissible. Employees taking part in inadmissible strikes may face disciplinary action up to a termination. For this reason, they generally adhere to the statutory rules.

In France as well as in Italy and Belgium, however, the right to strike is recognized and guaranteed by the constitution. As a consequence, spontaneous non-union strikes are possible. This means that, in addition to the unions, other groups of employees or internal advocacy groups may call a strike. In Belgium, any single individual employee would be entitled to do so. While an obligation to keep peace is entirely absent in Greek law, it does apply in French law, albeit only to the unions, but not to individual employees.

Another reason why strikes are not very common in Germany and quite predicable as well is that they are only admitted in the context of collective bargaining with the unions, but not as a means to put pressure on politicians. In other EU countries, however, strikes may be called for political motives as well. This applies e.g. in Belgium, Denmark and Italy.

B. Five myths about German labor law that are not quite true

1st myth: *"Is protection against dismissal in Germany much more employee-friendly than in all other EU countries?"*

Fact: Protection against dismissal is of great importance in Germany. However, this applies to other EU countries, too. In some countries, the level of protection against dismissal is even higher and the employer's flexibility is much more limited. In Germany, the general protection against dismissal only applies to employees

Hot Topics

after a period of employment of at least six months. In the Netherlands, in Spain and Portugal, for example, there are no such "waiting periods" for protection against dismissal. In these countries, employees are protected against dismissal from day one. The German threshold provision, i.e. the exclusion of small businesses with up to ten employees from the scope of application of the Termination Protection Act, provides flexibility of operation and action in particular to international companies planning to establish and develop their businesses initially with a small team.

In addition, in Germany, prior approval by an authority of a notice of termination is only required in exceptional cases, e.g. if the relevant employee is severely disabled or pregnant. In other EU countries, such as the Netherlands and France, labor authorities need to be involved as a general rule.

Finally, in Germany, companies are granted fairly large leeway in their business decisions resulting in terminations for compelling business reasons. Within the scope of termination protection proceedings, it is only examined whether the decision actually results in excess labor and whether it appears to be not entirely arbitrary. In some other EU countries, however, the courts also question the content of the business decision more closely. This can significantly limit the business freedom.

2nd myth: *"Are employment contracts in Germany too inflexible because the use of fixed-term contracts is restricted?"*

Fact: In case of new hires, employment contracts can be concluded for a fixed term of up to two years without any objective reason. In other EU countries, such as France, Hungary, Spain, Poland, Romania and Sweden, employment contracts cannot be concluded for a fixed term without any objective reason. In Germany, start-ups enjoy the privilege that they can conclude employment contracts for a fixed-term of up to four years without any objective reason. This applies in the first four years after the commencement of the business activities and is meant to help the companies to establish themselves on the market by allowing them special flexibility.

If there are sufficient reasons for a fixed-term contract, such time-limitations are permitted in Germany for as long as required on a case-by-case basis. There is no statutory maximum time period.

Upon expiration of a fixed-term contract, severance pay is neither required nor common practice in Germany. In some EU countries, such as Austria, Spain, France and Portugal, severance payments generally must be made even if the contract expires automatically.

3rd myth: *"Does Germany have more vacation days and statutory public holidays than other EU countries?"*

Fact: In Germany, employees have a statutory minimum vacation claim of four weeks, i.e. 20 days per year in case of a five-day week. The statutory provision thus exactly meets the minimum requirements set forth in the European working time directive. Accordingly, no other member state of the EU has less vacation days than Germany. But there are many EU countries, such as France, Portugal,

Hot Topics

Finland, Sweden or Austria, where employees have a higher minimum vacation claim (up to 30 working days per year).

On average, there are ten statutory (paid) public holidays per year in Germany. Compared to other EU countries this is also an employer-friendly figure. Other EU countries, such as Spain, Poland, Austria, Italy or the Czech Republic have more statutory public holidays. Some of them have as many as 14 public holidays per year.

4th myth: *"Are companies in Germany more strongly obstructed by works councils than in the other EU countries?"*

Fact: In Germany, the cooperation between companies and works councils is well established. In particular if the cooperation is kept reasonably objective, in part by means of support through lawyers, it is usually very constructive. A few black sheep have somewhat impaired the reputation of works councils and their public perception.

In Germany, employee representatives constitute an important link between employees and employers. If changes within the company take place in agreement with the works council, they are often received better by the employees than without an involvement of the works council.

In Germany, the employees of a company are entitled but not obliged to establish a works council. There are many companies without a works council. In other EU countries, works councils are mandatory for companies of a certain size.

5th myth: *"Are the social security contributions in Germany higher than in all other EU countries?"*

Fact: Germany has a sound social security system. The contributions depend on the income and are borne by employer and employee at almost equal shares. However, Germany is by no means the country with the highest social security contributions in the EU. Within the EU, the employer share in the social security contributions ranges at the lower end. In Germany, the employer share in the social security contributions currently amounts to approx. 20% of the salary and is limited by the contribution ceiling. In some EU countries, such as Hungary, Spain, France, Belgium, Italy and Austria, the social security contributions percentage is significantly higher, ranging from 25 to 30% of the salary. Also, the distribution is diverse, for example, in France the employer carries the main burden of the mandatory contributions.

Moreover, the contribution ceiling limiting the amount of social security contributions to be paid is set at very different levels. Some countries do not even have any ceiling and the social security contributions must always be paid on the entire salary.

When discussing social security contributions it should be kept in mind that these social security contributions are used to finance a health care system which is considered to be one of the best publicly available systems in the world and that employees in Germany benefit from it.

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