

March 2024

Final Draft of New Bureaucracy Relief Act IV - Effects on Employment Law Practice

Dear Reader,

On March 13, 2024, the German Federal Government adopted the updated draft of a "Fourth Act to Reduce Bureaucracy for Citizens, Business and the Administration" (so-called Bureaucracy Reduction Act IV) presented by the Federal Ministry of Justice. Approval by the Bundestag and Bundesrat (the two legislative bodies in Germany) is considered likely. We would therefore like to summarize the possible effects of the Act on employment law practice, whereby the individual legislative amendments will come into force in stages:

I. Conclusion of Employment Contracts in Electronic Form

(Effective: expected 3rd or 4th quarter 2024)

Employment contracts do not currently have to be drawn up **in writing (wet ink)**. However, according to the German Act on Evidence (NachwG), which has been in force since August 01, 2022, employees must be provided with written evidence of the essential terms and conditions of employment by the employer. In practice, employment contracts are therefore generally concluded in writing.

§ Section 2 (5) of the NachwG will in future stipulate that the terms and conditions of employment can also be evidenced in a statutory electronic form that replaces the written form. In future, it will therefore be sufficient to merely send an employment contract concluded in electronic form to the employee in a printable format. The same applies to electronically concluded amendment contracts in accordance with Section 3 NachwG.

Excluded from the new regulation are the economic sectors and industries pursuant to Section 2a (1) of the Act to Combat Clandestine Employment, namely the construction industry, the catering and accommodation industry, the passenger transportation industry, the forwarding, transport and associated logistics industry, the showman industry, forestry companies, the building cleaning industry, companies involved in the construction and dismantling of trade fairs and exhibitions, the meat industry, the prostitution industry and the security industry.

II. Termination still subject to Written Form

The written form requirement for the termination of employment relationships remains unaffected. Pursuant to Section 623 of the German Civil Code (BGB), the termination or annulment of employment or service relationships must continue to be in writing in order to be effective. The electronic form remains excluded even after the Bureaucracy Reduction Act IV comes into force.

III. Flexibilization in the Area of Parental Leave (Effective : expected May 1, 2025)

In future, employees' applications for part-time parental leave and the application for parental leave itself can be submitted to the employer in text form. The written form previously required for asserting these claims will be abolished. Similarly, the employer can in future also reject the reduction in working hours or their distribution in text form, stating the reasons.

IV. Electronic Employment References (Effective: expected 3rd or 4th quarter 2024)

The ban on issuing references in electronic form is to be removed from Section 630 of the German Civil Code (BGB) and Section 109 (3) of the German Industrial Code (GewO). However, the amendment to the law does not affect employees' right to a written reference under Section 109 (1) sentence 1 GewO. If an employee asserts this claim, the employer must continue to issue the reference in writing.

V. Digitization of Notices (Effective: expected 3rd or 4th quarter 2024)

Records and documents that were previously required by the Working Hours Act (ArbZG) and the Youth Employment Protection Act (JArbSchG) to be displayed or posted in a suitable place in the company or office for inspection can in future also be made available to employees "via the information and communication technology commonly used in the company or office", i.e. also digitally. This applies, for example, to the collective agreements and works or service agreements applicable in a company. It is now sufficient for the documents to be made available on the intranet or in a company app, provided that all employees have free access to this information.

VI. Digitalization within the Scope of Application of the Home Work Act

(Effective: expected 3rd or 4th quarter 2024)

In future, it will also be possible to submit the list of home-based employment, which has to be drawn up every six months in accordance with Section 6 of the Home Work Act and sent to the Supreme Labor Authority or the body designated by it, electronically. Accordingly, the requirement to send three physical copies of the list will no longer apply.

We will of course inform you when the above changes actually come into force and are eager to see whether the simplification of bureaucracy will lead to changes in employment law practice and HR work. We would be happy to remain in a lively exchange with you in this regard. Our employment law team will also be happy to answer any questions you may have.

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