

URGENT NEED FOR ACTION FOR ALL EMPLOYERS - AMENDMENT TO THE EVIDENCE ACT

Jun 24, 2022

WHAT IS THE EVIDENCE ACT

The Evidence Act regulates the essential contractual terms that have to be set out in writing. According to current regulations, such terms would include, for example, the name and address of the contracting parties, the start date of the employment relationship, the place of work or alternatively confirmation that the employee may be employed at various locations, a brief description of the employee's activities/job duties, working hours, holiday entitlement, and notice periods. According to current regulations, the employer must set out these terms and conditions in writing no later than one month after the agreed commencement date of the employment relationship. The employer must sign the relevant minutes setting out the terms and provide them to the employee. In practice, this is regularly done by means of a written employment contract.

BACKGROUND TO THE AMENDMENT

According to the EU directive on transparent and predictable working conditions in the European Union in the area of civil law (so-called Transparent and Predictable Working Conditions Directive, [2019/1152](#)), all member states are obliged to transpose the regulations contained in the Directive into national law by July 31, 2022. Otherwise, the Directive will be directly applicable. The aim of the Directive is to guarantee the transparency and certainty of working conditions by setting uniform minimum requirements for providing written terms and conditions of employment to employees.

As German law does not currently meet all the requirements of the Directive, one of the measures required is an amendment to the Evidence Act, which has now been adopted.

SIGNIFICANT CHANGES TO THE EVIDENCE ACT

The German Bundestag has now passed the following new regulations to the Evidence Act:

- The number of essential contractual conditions that must be set out in writing has increased. The following terms must now be provided in addition to the minimum information that must currently be provided to the employee, all at the beginning of the employment relationship:

- the duration of the probationary period;
 - the due date and method of payment (e.g. by bank transfer) of remuneration for work, including remuneration for overtime, bonuses, and special payments;
 - agreed working hours, rest breaks and rest periods, and, in the case of agreed shift work, the shift system, shift rotation, and conditions for shift changes;
 - in the case of work carried out on-call pursuant to the Act on Part-Time Work and Fixed-Term Employment (TzBfG), the number of hours to be paid as a minimum, the time frame for the performance of work, and the period within which the employer must give advance notice of the distribution of the working hours;
 - the possibility of directing overtime and the conditions thereof;
 - any entitlement to further training.
-
- The most relevant change in terms of mandatory written working conditions is that the employer must inform the employee about the termination procedure to be followed in the employment contract. Written employment contracts must now refer to the written form requirement for termination, including notice periods and the period for filing an action for protection against unfair dismissal.
 - The time limit for handing over the essential contractual terms and conditions has been significantly shortened. For example, information relating to the names of the contracting parties, the amount of salary, and agreed working hours must be given to the employee on the first day of work.
 - To date, the Evidence Act has been perceived as a “blunt sword”. While a breach of the obligation to provide written information to employees under the previous Evidence Act had no consequences, the employer now faces a fine of up to EUR 2,000.00 if it does not or does not correctly fulfil its obligation to provide information to employees.
 - The legislator has not taken advantage of an opportunity for digitization in Germany, even though the European Transparent and Predictable Working Conditions Directive explicitly provided for electronic provision and transmission. The legislator continues to require the strict written form. Unfortunately, proof in electronic form remains excluded.

SPECIFIC NEED FOR ACTION BY EMPLOYERS

In practice, this means:

- Employment contracts agreed **after August 1, 2022** must contain all of the contractual conditions referred to above, otherwise the employer is exposed to the risk of a fine. Although most of the essential contractual terms and conditions are already mentioned in the majority of employment contract templates anyway, what is new is the reference to the termination procedure that must be followed and the notification about the time limit for filing an action for protection against dismissal. To date, these are rarely expressly set out in employment contracts. Therefore, an immediate update of all contract templates is necessary to comply with the new rules.
- All employment contracts that were agreed **before August 1, 2022**, do not have to be amended as referred to. However, on request, the employee must be given the written minutes containing the main terms of the contract within seven days. In this respect, employers should prepare appropriate information sheets for employees in a timely manner. Alternatively, new contracts may be offered to those employees.

Because of the extensive mandatory information that employment contracts must now contain, it is essential to review carefully all employment contracts and/or templates. Please, do not hesitate to contact us if you have any questions.

MEET THE TEAM



Julia Schweitzer

Frankfurt

julia.schweitzer@bclplaw.com

[+49 \(0\) 69 970 861 223](tel:+49(0)69970861223)



Svenja Langohr

Frankfurt

svenja.langohr@bclplaw.com

[+49 \(0\) 69 970 861 229](tel:+49(0)69970861229)



Janine Eschenauer

Frankfurt

janine.eschenauer@bclplaw.com

[+49 \(0\) 69 970 861 226](tel:+49(0)69970861226)



Kristin Frohne

Hamburg

kristin.frohne@bclplaw.com

+49 (0) 40 303 316 257

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.