



USING YOUR HANDBOOK OR GTC FOR STAFF IN GERMANY

Are you employing in Germany?

A company's success is not only measured in numbers and a company's identity is not only determined by its product, brand name, or image. Nowadays, proper employee management and employee satisfaction is almost as important as the quality of the product or service.

In order to ensure employee satisfaction and prevent compensation claims and lawsuits, equal treatment and protection of employees from harmful impact and hostile behavior are crucial. Since legislation is becoming more and more strict and the public is more aware of unfriendly working environments, it is necessary to monitor these prerequisites, thus making it essential to establish very detailed rules on how to structure and organize your work environment. To safeguard a good work atmosphere and to prevent your company from claims, handbooks or General Terms and Conditions (GTC) have become a suitable and more and more common instrument to establish and communicate general rules. A company handbook contains company policies, procedures and expectations, rules on how to clarify uncertain situations and avoid or solve conflicts down the line, thus aiming at securing a trustful and professional relationship between the employer and the employee.

Using handbooks in Germany

For companies acting on the global market, it is quite a challenge to set up rules that are applicable in every country and jurisdiction where the company employs its staff. Regulations permissible in one jurisdiction might be impermissible in others. On the other hand it is necessary for companies to appear with a uniform identity at the global scale. Therefore, and for ease of use it is tempting to implement the same guidelines in all jurisdictions. Unfortunately, in order to efficiently establish regulations and policies across borders, it is not enough merely to replicate a handbook that was created for the UK or the US.

German legislation and its jurisdiction are quite different from other legal orders being very employee friendly and protective in nature. Due to the particularities of German employment and labor law, companies are not well advised just referring to their original handbook or GTC of Employment in their engagement letter or employment contracts with German employees. However, it is not necessary to reinvent the wheel. With the help of competent lawyers, handbooks prepared for other jurisdictions can be adapted to the German environment.

Buse Heberer Fromm supports its clients in all areas of employment and labor law. Our labor law specialists can help you to adapt the regulations set out in your handbook. Although handbooks are quite foreign to German employment and labor law, using a handbook is generally possible. However, the particularities of German labor and employment law need to be observed.

Implementing handbooks for German staff members

The following is an example of the global complexities and nuances at play: In the UK, as well as in the US, the regulations of a handbook are not part of the employment contract itself. Contrarily, in Germany, regardless of the parties' intentions and agreements, handbooks are considered to form part of the employment contract. Thus, both of them are governed by very strict legislation and jurisprudence. This bears a lot of risks including the consequence of ineffectiveness of some or all rules. Not only the content, but also the means of implementation need to be taken into consideration; for instance simply referring to a handbook or to GTC that can be changed at the discretion of the employer at any given time, can result in the total ineffectiveness of these rules.

Diversity of German labor & employment law

German labor and employment law is very protective of the employees. Statutory law is to a large extent binding. Neither the employer nor the employee can deviate from most statutory rules to the employee's detriment. A stipulation deviating from binding statutory law renders it void and instead statutory law comes into effect. Additionally, the jurisprudence of the Federal Labor Court, as well as the higher regional labor courts, have set up a variety of principles to protect employees' interests. These have the same effect as statutory law. Thus, any rules the employer establishes must comply with these requirements in order to be binding.

Furthermore, the handbook's regulations have to be brought in line with other instruments of German labor and employment law. There is a great variety of legal sources that determine the

rights and obligations of employees and employers in a specific employment relationship. These for example include shop agreements, collective bargaining agreements, company practices, directives of present or even former employers, and the principle of equal treatment. Each of these is tied to different preconditions concerning validity and is governed by its own rules. Furthermore, these rules can be binding for very specific groups of employees and have very specific implications.

Conditions of effectiveness

Since a handbook is considered to form a part of the employment contract, every single stipulation in the handbook can be ruled void if it is considered unfair, unclear, nontransparent or unbalanced. This even applies if the unfair part of the clause is completely irrelevant for the specific case at hand.

Therefore, it is for example necessary that the regulations are in systematic order to be easy to read, understand and respect (transparency). A provision can be considered void if placed in the handbook or in GTC where the employee might not expect it. The same is applicable, if a topic is not only regulated in the individual employment contract, but with differing content in a handbook. In such cases it is unclear which regulation should prevail. Even though two sets of regulations exist, none of them is binding, even if they are not in direct conflict with each other. In this case statutory law is applicable.

Thus, any handbook needs to be aligned with all applicable sets of rules.

Company policies

Furthermore, company policies need to be revised with special care.

Handbooks used in Anglo-American countries often include regulations which document the companies' policies, and contain standards of conduct as well as general employment information. Companies using the same system for German staff might be imposing obligations on

themselves without being obligated to do so under German law. They might even end up binding themselves to their own detriment with regard to employment relations in Germany, but not the German employees.

Furthermore, companies risks contravening statutory regulations. In this case, not only the rule in question may be invalid, having the consequence that employees do not have to follow it, but in special circumstances the company may be fined. For example, if a handbook contains regulations regarding regular working hours per week or the duration of breaks, the regulation might be in conflict with the German Working Time Act which may result in a fine. In some cases such regulations merely need to be adapted; in other situations it may be preferable to drop the regulation and to let statutory law take its place.

Our practice group's services

We offer revising and adapting documents concerning employment relationships to any desired extent. We perform basic reviews of handbooks, the results of our assessment being represented by traffic-light colors. From there on we can go further and eliminate sections that prove to be inadaptable and adapt those rules that are, ensuring their compatibility with the entire set of rules under the German legal system. In adapting your handbook, we will always stay as close to the original as possible and find practical solutions for conflicts with managerial interests.

To ensure full legal compliance, our firm can conduct an employment law audit. The audit's purpose is to identify the entire applicable law and other rules such as collective agreements applicable to your activities in Germany. Subsequently these standards will be implemented into your company's handbook, policies, procedures and practices. Our services may include identifying potential areas of concern and help solving them. Furthermore, we provide any other service your human resources department might need. Employment and labor law is one of Buse Heberer Fromm's core areas of business. Our range of

services includes all aspects of individual as well as collective employment law; we provide advice on employment contracts, the management of employees, amendments to conditions of specific employments, fixed-term contracts, disciplinary procedures, the preparation of managerial decisions and their implementation concerning the termination of employments including administrative procedures, applications for consent as well as lawsuits. Furthermore, we can provide advice and assistance concerning any problems with works councils, trade unions and public administration with regard to restructuring the work force or business, improving cost effectiveness, implementing or adapting incentives and bonuses, negotiating agreements with works councils and trade unions, integration after acquisitions or mergers etc. Due to our focus on employment law, we are always up to date with developments in legislation and jurisprudence and use our knowledge proactively in our advisory work via client information, circulars, newsletters, and client seminars etc.

All work is performed by senior lawyers specialized in labor and employment law and who are based in Germany and admitted to the bar.

Executive summary

- **Handbooks form part of the employment contract.**
- **Handbooks must comply with the strict rules of German law and jurisprudence.**
- **Handbooks must be adapted to shop agreements or any other sets of rules governing the employment.**
- **Rules in Handbooks can be deemed legally void if they do not comply with these rules.**
- **The use of foreign handbooks for employees based in Germany without adaptation may result in ineffectiveness, cause fines or bind the employer to his detriment without binding the employees.**

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...is one of Germany's largest independent full service law firms and one of the "leading law firms for Mittelstand companies" (Kanzleien in Deutschland) and "highly valued by clients for their quality and innovative strength" (LEGAL500). With more than 100 qualified attorneys, auditors, and tax advisors we advise national and international clients in all areas of commercial and tax law from six offices located throughout Germany (Berlin, Düsseldorf, Essen, Frankfurt am Main, Hamburg and Munich) and eight foreign offices (Brussels, London, Milan, New York, Palma de Mallorca, Paris, Sydney and Zurich).

We strongly focus on small and medium-sized companies. Buse Heberer Fromm places great importance on individual support of its clients, personal advisory services, and continuity in its relationships with clients. With the expertise of

our Practice Groups we guarantee optimum, customized solutions for both the implementation of projects and transactions of all sizes as well as ongoing legal advice. We provide each of our clients with a central contact person, who coordinates the work of our experts involved in the true interest of the client.

The business requirements of our clients and our professional commitment are of key importance to us. In order to optimize collaboration on an ongoing basis, we constantly and keenly follow the development of your company. We place particular value on a long-term relationship with our clients, since the duration of the client relationship has a considerable influence on the quality of advice. Only when you really know the needs of your clients, you can contribute to optimizing their business in a sustainable manner through your advisory work.

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