

IN A NUTSHELL

KEY POINTS ON LABOUR LAW

ICT



our industry
our union

IN A NUTSHELL:

KEY POINTS ON LABOUR LAW

With tips for employees in the ICT industries

A few preliminary words



*Christiane Benner
Vice President of IG
Metall*

It would be a good idea to keep this brief guide to labour law in your desk drawer – because even if things are running like clockwork at your workplace, questions as to your rights can arise time and again, especially in a branch of the economy like the ICT industry.

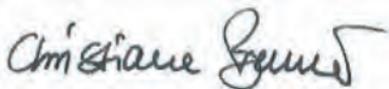
It is very advantageous if you've voted for a works council that can provide you with qualified advice. Many conflicts can be avoided simply by the works council being in continual dialogue with management about working conditions and thus being able to arrange and agree to benefits.

You can call on the works council at any time and your matter will, of course, be handled in a discrete manner.

Most works councils belong to the Industrial Union of Metalworkers, which shapes your working conditions – working hours, wages, holidays – through the collective agreement.

In 2013, the Industrial Union of Metalworkers concluded a “collective labour agreement” for the ICT industry, the first of its kind in this industry. The employees of the IT service provider, Atos IT Solutions, and Services GmbH have benefited since, for example, from regular joint pay increases.

Our collective agreements have many advantages! They provide fairness and security. But they don't just come out of thin air. Many members are needed in order to articulate the demands and to enforce conditions. We therefore warmly invite you to join IG Metall!

A handwritten signature in black ink, appearing to read "Christiane Baumert". The signature is written in a cursive style with a large, stylized initial 'C'.

Breaks (Pausen)

Breaks during working hours are regulated by law and, in many cases, also by collective agreement. The working hours law stipulates: If you work 6 hours or more in a day, the work must be broken up by breaks set in advance of at least 30 minutes, if you work more than nine hours by at least 45 minutes. The breaks can be divided into periods of at least 15 minutes, respectively.

The break does not count as work time. The Collective agreements are generally more favourable to workers than the statutory regulations, especially with regards to shift work. If you are uncertain about how breaks are regulated in your company, check with the works council or the trade union.

Christmas Bonus (Weihnachtsgeld)

The Christmas bonus is a special payment within a company. The amount varies greatly depending on the economic sector and the region. The Christmas bonus is regulated either by a collective agreement, an employer-works council agreement or the employment contract. It is also common for a mix of these to be used: part of the Christmas bonus is covered by the collective agreement, another is an extra benefit from the employer.

The Christmas bonus agreed to through collective bargaining also must not be reduced during economically difficult times. If it is not regulated through the collective bargaining agreement, then the employer and the works council can agree to a reduction in the Christmas bonus.

If the employer pays the same Christmas bonus for three years running, one can refer to this as the “customary practice”. Employers are then obligated to continue paying the Christmas bonus, unless they have indicated that it is a voluntary payment and does not create any legal rights or obligations in the future.

Tips: Business Trip (Dienstreisen)

A business trip is a trip that is undertaken in the interests of the company. The working time is spent for a limited time outside of the company. In many companies, there are employer-works council agreements or regulations that are unilaterally arranged by the employer.

Is travel time equal to work time?

Some employers suggest that travel time is not used for business purposes. Work travel, however, is mainly used to take care of other work that has come up. If this has been set by the employer, the travel time must be paid as work time.

What is the difference between a business trip and external work?

External work is when your main duty requires you to visit and look after clients outside of the company. The advantage of external work is that it is often much better regulated. Payment is normally higher and certain work times are remunerated at penalty rates according

to the employment contract or collective agreement. However, the precise form in which it differs is not legally stipulated. A clear relationship can only be created by your employment contract.

Are your expenses reimbursed?

Your employer is required to reimburse all costs you incur while you are on a business trip. According to section 670 of the German Civil Code (Bürgerliches Gesetzbuch), travel costs as well as expenses that arise must be covered. The guidelines of the taxation law have resulted in only a flat-rate payment for meals being provided.

Can you refuse to go on a business trip?

Because it is within the director's right to arrange a business trip, this is only possible in cases where it can be justified. The works council also has no direct right of co-determination. It can, however, exert influence in regulating working hours, measures relating to personnel and health protection.

Collective agreement (Tarifverträge)

Collective agreements are the most important instrument in shaping working and remunerative conditions. They are negotiated between the unions and employers, either for one branch nation-wide, for a pay scale area or for individual companies (company collective agreement).

Collective agreement regulations are generally much better than the statutory minimums. Collective agreements regulate the weekly working hours, annual leave, holiday pay, 13 month income (Christmas bonus) and the possibility of further professional training, to name just a few examples. Benefits that are taken for granted by many people today were often gained by unions and their members only after long and difficult pay disputes. Only union members have a right to collective agreements.

Continuous improvement (Kontinuierlicher Verbesserungsprozess)

Continuous improvement refers to employee contributions to improving business and production processes and increasing the efficiency of the company. Here employees do not expect large, spectacular innovation but suggestions for improvement that can be made without significant technical or financial expense. With the continuous improvement process, employers want to use the expertise and experience of their employees in order to increase the quality of their products and decrease the costs. Experience shows that continuous improvement increases care in the handling of material, improves work organisation in the companies and consequently reduces production times.

But continuous improvement can also lead to higher output by individual employees, and thus eventually to a decrease in the number of staff. The works council should, therefore, make full use of its rights of co-determination for quantity and time guidelines, breaks and staffing and counteract the ancillary effects of improvement that may lead to a decrease in staff due to an individual performing so efficiently.

Continued pay (Entgeltfortzahlung)

Continued pay means that you are not working but still get paid. This is the case, for example, for all public holidays and maternity protection periods.

Continued pay during periods of illness is perhaps the most important regulation. The employer must continue to pay the entire wage for a period of six weeks. Following this period, you will receive sickness benefits from your health insurance company.

Crowd work (Crowdworking)

Crowd work is part of a larger change in the work world, which mainly deals with digitalisation, networking and the move to greater flexibility of working conditions. Crowd work is internet based: companies post work online to be completed by a large number of unspecified people (the “crowd”). “Crowd workers” from all over the world compete for the work. This process is mediated by crowdsourcing “platforms” – websites – that act as employment agencies. Millions of people already work regularly on such platforms, such as Amazon Mechanical Turk, Clickworker, Topcoder, Upwork and 99designs.

The work ranges from small tasks to design work and challenging engineering assignments. The working conditions are very often lacking in transparency and unfair, and many of the jobs are poorly paid. The Industrial Union of Metalworkers wants to make crowd work fairer and has set up a website about crowd work at www.faircrowdwork.org.

Data protection (Datenschutz)

Employee data protection is currently inadequately regulated by the Federal Data Protection Law. Most issues are still left to established case law. Many issues are still unclear.

In everyday business, this legal uncertainty is often exploited at the expense of employees. Infringements of personal rights through new technology, continual surveillance and secret performance and behavioural controls or evaluation of personal information urgently requires comprehensive regulation. IG Metall wants to protect workers from the “climate of control” and the misuse of data. It is demanding, for example, a ban on video surveillance and on dragnet investigations taking place within the industry.

Employee Appraisal Interview (Mitarbeitergespräch)

Employee appraisal interviews is used by personnel management and considered a sign of good corporate culture. They are intended to improve communication between management and staff, increase motivation and strengthen team spirit. Generally, they take place once yearly, mainly in private and sometimes in small groups.

During employee appraisal interviews, the managers provide feedback on whether they are satisfied with the performance of the employees. They can present their views on issues. Finally, both sides agree to the objectives for the coming year and possible training. The results are recorded in writing. If agreement cannot be reached in assessment of performance or setting targets, third parties may be brought in. Further details are frequently regulated in employer-works council agreements.

You should be well prepared for an employee appraisal interview because it may have an impact on your career progress and remuneration.

› *Employer-works council agreements*

Employees not participating in the collective agreement (AT-Angestellte)

Employees with a higher income to whom the collective agreement does not apply may negotiate their working conditions individually with their employer.

However, this only refers to those who are not actually participating in the collective agreement, i.e. those, who, firstly are assigned a task that places higher demands than those defined by the highest pay group and, secondly, receive income clearly above the highest pay group. Where exactly the collective agreement ends is defined differently by the individual collective agreements. Some – such as the collective agreement of the Nordwürttemberg/Nordbaden metal industry – do not permit contracts outside the collective agreement at all; others contain a minimum distance provision.

Thus the industry-wide collective agreement of the Bavarian metal industry states: “Not within the definition of for the purposes of the contract are other employees to whom a guaranteed monthly income is promised by being outside the basis of the collective agreement,

which exceeds the EG 12 (level B) by 30.5% or to whom a guaranteed yearly income is promised on the basis of being outside the collective agreement, which exceeds the 12 fold pay rate of the EG 12 (level B) by 35%. In practice, the total gross annual remuneration of an employee outside the collective agreement is, however, frequently below the collective pay scale classification, including all collectively agreed benefits. Thus is it worthwhile to check the contract with IG Metall closely and to seek appropriate advice.

Employer-works council agreements (Betriebsvereinbarungen)

The employer-works council agreement is an agreement between the works council and the employer, in which the working conditions for all employees are regulated in a binding manner.

The conclusion of employer-works council agreements is always mandatory if the works council has right of co-determination. This includes, for example, the location and distribution of working hours, shift plans, working availability and standby, external work, methods of data collection for performance related remuneration or the social plan for downsizing in staff. The works council and the employer may also enter into voluntary agreements, for example, concerning company social benefits. This can only take place if mutually agreed upon and cannot be forced upon the company partner.

› *Works Council*

Employment contract (Arbeitsvertrag)

In the employment contract, employers and employees agree to the conditions of employment. The employer agrees, amongst other things, to give you a particular duty, to pay you a monthly wage and to grant you holiday. In return for this, you declare yourself ready to respect the set working hours and to perform the role as prescribed. Employment contracts are not permitted to violate provisions of labour law or deviate only to the benefit of the employer. Minimum notice for dismissal, continued payment in the event of sickness and parental leave must be guaranteed to all employees. A legal claim to performance from a collective agreement is only enjoyed by those who are members of the union. For the effective limitation of the terms of employment, there is – with the exception of temporary employment arrangements (§ 14, para.4 TzBfG) no requirement for it to be in writing. If, however, an employment contract is agreed to orally, the employer must provide the employee a signed copy of the work conditions up to one month following the agreed commencement of employment.

Equal Treatment (Gleichbehandlung)

Nobody at work can be discriminated against on the basis of their race or ethnicity, gender, religion, ideology, disability, age or sexual orientation. This is banned by the Equal Treatment Law (Gleichbehandlungsgesetz), also called the anti-discrimination law. In many instances, the reality differs: Well-paid jobs, particularly leadership positions, are predominantly offered to men, and disabled and foreign applicants often have no chance even for lower-skilled positions. Offensive statements about gays and lesbians or people with differently coloured skin are still a long way from being eradicated from the workplace. The employer is obligated to remove discrimination and to punish any discriminatory behaviour. If a person feels discriminated against, he or she can complain to the employer and works council and receive legal advice from the union.

External Work (Außendienst)

External work refers to all work that is not done on the company premises. It is common in the areas of sales, assembly, installation, service, maintenance, repairs, upkeep and consultation.

In many companies, the conditions for external work are set in collective agreements or employer-works council agreements. If they are not, the travel costs as well as the calculation of the working hours should be set by the employment contract.

› *Business trip*

Gender Pay Gap (Einkommensunterschiede)

What is now called the “gender pay gap” is an old problem: the difference in income between men and women. Although it has been closing in the last 20 years, the gap is still around 20% in Germany.

The main causes: Professions that are typically undertaken by women, such as teaching and nursing, have significantly poorer standing and remuneration than “male professions”. In addition, many women work part time due to family reasons, resulting in a lower pay.

In the ICT industry, the differences in income are comparatively low. Thus a female IT consultant earns on average three per cent less than her male colleagues; but a female software engineer actually earns three per cent more.

Source: Lohnspiegel

Holidays and Holiday Pay (Urlaub und Urlaubsentgelt)

Employees are to be given at least 24 days of holidays according to the German Federal Holiday Entitlement Act (Bundesurlaubsgesetz). This means four free weeks each year with a six-day week. Employees of the ICT industry for whom the IG Metall collective agreement applies have the right to six weeks of holidays. Members of IG Metall fought for this extra time through tense pay conflicts and strikes. Your holiday demands cannot be disputed by anyone. They are also not affected if you are not able to take the holidays due to sickness.

Collective agreements and bargaining agreements see to it that holidays, in part, can be transferred to the following calendar year. Don't let your holidays be forfeited; rest and relaxation does everyone good!

During your holidays, you will continue to receive your average remuneration on the basis of the Holiday Entitlement Act or paid by the collective agreements (holiday pay)

Tips: Continued training (Weiterbildung)

Today life-long training is essential if you want to consolidate your future in your role or want to open yourself up to new possibilities. Industrial and technical workers are just like their colleagues from commercial areas and IT.

Today new training pathways are open:

- Occupational advancement training
- Late acquisition of school leaving certificates
- Studying with and without the Abitur
(German qualification for university entrance)
- Educational holidays

Close to practice

Career advancement training requires vocational training and several years of professional experience. It is set with a practical orientation. Employees are able to gain higher professional qualifications step by step. The qualifications of commercial specialists, business administrators, master craftsmen and operative professionals correspond to Bachelor's degrees

acquired from university. You become qualified for mid-level professional and leadership tasks. After that the path is open, for example, to technical business administration, or in the commercial and IT sectors to business administration and becoming strategic professionals. These qualifications correspond to the Master's degree level. You are then qualified for tasks related to strategic management.

Career advancement training can be done alongside your job or can also be done on a full-time basis. These qualifications do not result in higher pay.

However:

Continued training is recommended

- Six out of ten graduates of further training improve themselves straight away both professionally and financially.
- Three to five years after the examination, 70% of graduates have benefited: through a better position, a larger area of responsibility or higher wage. (German Chamber of Commerce Survey)

Holiday Bonus (Urlaubsgeld)

The holiday bonus has no legal basis. A claim may arise, for example, on the basis of collective agreements, company agreements or contractual arrangements. Information on the amount and procedure for payment is available from your works council or, as a member of IG Metall, from the appropriate office.

Idea Management (Ideenmanagement)

Idea management – previously referred to as the employee suggestion system – is a business management system. Employees are offered financial incentives to be involved in the improvement of products and production processes.

If no pay regulations are in place to govern this, the works council can set the foundations for the company's idea management, together with the employer. Such an arrangement within the company should include the following points: the annual submission deadline for suggestions for improvement, the make-up of the commission evaluating the suggestions and the criteria that will be used for the evaluation. And of course, the way successful suggestions should be recognised.

IG Metall (IG Metall)

IG Metall is the trade union of all employees in various production and services sectors of the economy, including the metal and electronics industry, the iron and steel industry, textiles and clothing, wood and synthetics, as well as 90 trades. With almost 2.3 million members, it is the largest single trade union, not only in Germany, but worldwide.

IG Metall represents the interests of its members in diverse ways. It concludes collective agreements, advises, and trains work councils and employee representatives on supervisory boards. In the community, it influences economic, industrial and social policy. In labour and social security law conflicts, it provides legal protection to individual members.

› *Diagram page 32*

Internet Use (Internetnutzung)

The employer can decide unilaterally whether email and the internet can be used at work for private purposes. Employer- works council agreements often regulate the use of online media. If this is not the case, the private use of the company's systems in most cases is prohibited. Employees are then treading in a highly sensitive "mine field" and never far from prohibited use.

In companies in which private use is silently accepted, employees must be aware of certain things. Working time cannot be used for private internet use and employees must refrain from illegal use, such as the downloading of films protected by copyright. If a person breaches his or her obligations under the employment contract, this can result in an official warning and, in the worst case scenario, dismissal. For permitted private use, the employer is essentially not allowed to regulate internet use of employees. Employee data protection is, however, full of holes and uncertainties, and it is not uncommon for it to be interpreted to the detriment of employees.

› *Data protection*

Labour Law (Arbeitsrecht)

Labour Law includes everything that regulates working conditions and the relationship between employer and employee. It is not a self-contained legal code but is made up of various individual laws and regulations. Labour law includes, for example, pay conditions, industrial relations law, employer-works council agreements and the contracts of employment. Moreover, judicial decisions exert a large influence on labour law.

Legal Protection (Rechtsschutz)

In disputes relating to employment or social security law (pension, accident, health and unemployment insurance), IG Metall supports its members with free legal advice and representation in court cases. In addition, it covers the cost of the legal dispute, including, for example, procedural and expert witness fees.

The requirement for legal protection is: You have been a member of a union that is member of the Confederation of German Trade Unions (DGB – Deutscher Gewerkschaftsbund) for at least three months, you have paid your membership fees, and the lawsuit has a chance of success.

IG Metall and the works council can advise you on the basis of their experience and particular knowledge of the situation to find solutions in the event of a dispute. This result is also often reached without resorting to legal action.

Liability (Haftung)

A person is responsible for the damage or injury he or she causes. Although this is a principle that applies in private life, it is only partly true at work. According to established case law, employees are only responsible for damage or injury caused intentionally or due to gross negligence.

For accidents in the workplace, the employer is responsible for all physical injuries, unless they are caused by a motor vehicle accident or the accident was intentionally caused.

Furthermore, the employer is also liable for property damage caused by an employee if the damage was caused during work and was not covered by wage or common risks to life.

Mobbing (Mobbing)

Mobbing refers to the making of coarse or rude remarks, belittling a person, or harsh criticism. Mobbing at work has a number of faces: colleagues being cut down, isolated, harassed, belittled, denigrated or disparaged as a sex-object – and both management and other staff can be involved. The effects can be terrible, in extreme cases the victim of mobbing may be pushed to suicide.

Employers have a duty of care to their employees. They must ensure that the mobbing ends. Depending on the circumstances, the employer can warn, caution, transfer or dismiss the perpetrator. The victims can press for an injunction, compensation or damages for pain and suffering because it may even amount to an offense, such as defamation, assault or coercion.

In some companies, there is an employer-works council agreement which regulates the way in which mobbing is dealt with. The first point of contact is the works council, which can act as a mediator or call for the employer to act.

Works Council

(Betriebsrat)

Elected
by staff

- Negotiates the employer-works council agreements on working conditions, for example, the pay scale groupings, the specific working hours, such as the start times, breaks, annual closing, and occupational safety and health protection.
- Ensures that laws, collective agreements and employer-works council agreements are adhered to.
- Advises employees.
- Has certain claims to information and actual rights of co-determination, for example, for appointments, pay scales, transfers or dismissals, and the right to initiate measures for further training.
- Elected by employees and works closely together with the trade union.

More than 52,000 works councils are members of the Industrial Union of Metalworkers – 71% of works councils in the metal, IT and electronics industry.

IG Metall

The Industrial Union of Metalworkers

- Negotiates collective agreements with the employers' associations or your company. This includes collective agreements on remuneration, working hours and holidays. Using the example of holidays: Legally these amount to 24 days per year, but IG Metall collective agreements offer 30 days per year.
- Leads collective bargaining movements in companies supported by union representatives. In contrast to the works council, IG Metall may call for strikes.
- Advises and trains the works councils, union representatives and members and supports them for industrial disputes.
- Has a vote in decision-making and advisory committees at state and federal level.
- Develops ideas for improved working conditions together with employees.



**Strength
through
members**

***Members
can vote!***

Notice of Illness (Krankmeldung)

If you are sick and cannot go to work, you have to inform your employer immediately. If you are not able to work for three days, you have to provide a medical certificate on the fourth day at the latest. Your employer can generally require you to provide the certificate on the first day of sickness.

Notice of Termination (Kündigung)

Notice of termination is given when the employer wants to end an individual's employment. In the interests of both parties, there are certain rules. These are set by legislation, collective agreements and contracts of employment and both parties must adhere to them. In particular, the type of dismissal, the period of notice and stipulations on dismissal protection are regulated. Notice of termination must always be given in writing! Termination may be effected due to serious work-related or personal and behavioural reasons. Termination

without notice can only be exercised if an employee seriously and repeatedly breaches his or her obligations under the contract of employment or offends, by, for example, seriously offending a fellow staff member or superior, becoming aggressive, stealing or embezzling company property.

Special protection from dismissal is enjoyed by trainees, the severely disabled, mothers on maternity leave, employees on parental leave and – depending on the collective agreement – older employees. The same applies for members of the JAV and the works council.

If a person wishes to complain against dismissal, he or she must submit a complaint for improper dismissal with the labour court. In any case, they should get advice from the works council or IG Metall before a decision is made.

On-call Duty (Bereitschaftsdienst)

On-call duty means a person is obligated to stay at a particular place so that he or she can take up work at any time.

On-call duty counts as working time. Remuneration for on-call duty is mainly set by the collective agreements. Being on standby has to be distinguished from on-call duty: Standby means that the employee must be contactable, but they are not required to stay at a specified location set by the employer.

› *Standby*

Overtime (Überstunden)

Overtime is time spent working in excess of the agreed daily or weekly working hours.

Overtime must not be ordered unilaterally by the employer. It must first of all be approved by the works council. If the works council gives its approval, then employees must perform the overtime.

The payment of overtime is regulated by collective agreements. Depending on the collective agreement, it may be paid at normal or penalty rates, balanced with free time or credited to working hours accounts.

› *Working hours accounts*

Parental Leave (Elternzeit)

Parental leave is leave from work for the mother and father following the birth of their child. They are each able to step out of work either completely or in part for a total of 36 months to take care of their child.

All employees are entitled to parental leave, including homeworkers. The requirement for this is that they predominantly look after the child themselves, live together with their partner and do not work over 30 hours per week during parental leave. This also applies to couples who are not married. Single mothers or fathers have the same rights. The parents alone decide on the beginning and duration of the leave. They can take the parental leave in three phases within an eight year period; the first 12 months have to be taken before the child is 3 years of age.

The application for parental leave has to be submitted to the employer, at the latest seven weeks prior to the requested commencement date and include exact plans for two years. As soon as the application is received by the employer, the parents are protected against dismissal.

Part-Time (Teilzeit)

Whether you work 30, 18 or 15 hours per week, if you clearly work less than full-time employees you are considered a part-time employee.

Part-time employees have to negotiate with the employer as to how working hours are divided and agree to this in the contract of employment. You could divide the hours equally between all workdays or bundle them together to have certain days off.

Part-time employees have the right to all regular company benefits. You receive holidays and annual payments proportionately; for training and applications for qualified positions you must not be disadvantaged. Employers in companies with more than 15 employees have the right to work part-time. They may – if they have worked at the company for more than six months – demand their work hours to be reduced. The employer can only refuse this wish if there are business reasons standing in the way. In quite a lot of companies there are also employer-works council agreements. If you wish to apply to work part-time, find out about these first with your works council.

References (Zeugnisse)

References are like business cards. They might act to open the door to new jobs for employees. For this reason, the content of references should definitely be reviewed. There are two types of references: the simple reference and the detailed reference. The simple reference is not in depth; it confirms only the duration of employment and the nature of the role. If you want to prove your suitability for a particular role, you will need a detailed reference in which your performance is evaluated. A person who leaves a job is entitled to a detailed reference. You only have the right to an interim reference (given prior to leaving the role) for a good reason, such as the departure of a superior or if you are to be transferred.

A reference must be comprehensive, true and favourable. But be careful: Many employers use codes that sound favourable but contain negative judgements. If you are uncertain about how the reference might be received, you should seek advice from IG Metall.

Remuneration (Entgelt)

This refers to the income or wage that you have agreed to with the company, regardless of whether you are paid per hour or per month.

IG Metall and the metal employers' association (Gesamtmetall) agreed to replace the previous collective agreements with a collective wage agreement for both "workers and employees" (Entgelttarifvertrag).

Your monthly remuneration is based on the pay category and level as well as performance related elements (piece-work, premium, performance bonus).

Pay increases are negotiated between IG Metall and the employers' association. The more visible the support of its members is, the greater the chances of the union reaching a successful conclusion.

› *Tip: IG Metall levies an annual fee ("Engeltherhebung") in the ITC industry (see www.itk-igmetall.de)*

Secondary Employment (Nebentätigkeiten)

Secondary employment is permitted and may not in general be excluded in contracts of employment. There are, however, limitations: Your secondary employment is not allowed to become so substantial that you are no longer able to fulfil your duties. The total working hours of all positions of employment is not allowed to exceed the statutory maximum working time and during holidays you are not allowed to engage in an activity that contradicts the purpose of holidays.

In collective agreements or contracts of employment it is often agreed that secondary employment must be reported to the employer. Under no circumstances are you allowed to work for a competitor.

Sexual Harassment (Sexuelle Belästigung)

Sexual harassment is a serious offense. Whether it involves verbal gaffes, ambiguous gestures or an attempt to persuade a colleague to have sex, a person making crude approaches risks consequences under labour law or dismissal without notice. This was already confirmed by the Federal Labour Court in 2012. Its landmark decision made clear that the often passionately held debate about the boundary between “still allowed” and “prohibited” behaviour is irrelevant. If a person makes ambiguous gestures or sexist remarks, this counts as harassment. The argument that the person concerned did not defend him or herself is inconsequential. It is enough that the culprit could have noticed that the actions were uncalled for. Those affected should not hesitate in complaining to a superior or the employer. Other points of contact include the women’s representative or the works council. All are required to maintain strict confidentiality. The victims are not allowed to suffer adverse consequences for speaking out.

Special Leave (Sonderurlaub)

On certain occasions, special leave is needed. On some occasions this is granted with continued payment, on others it is not. Paid special leave is generally granted for an employee's own wedding, the birth of a child, when moving house, or the death of someone close. The number of days that are available to you is specified in the collective agreement, the employer-works council agreements or in the employment contract. Unpaid special leave is given to employees who work voluntarily for the union and take part in meetings of the board, the bargaining committee or other committees.

Staff Meeting (Betriebsversammlung)

The staff meeting is a meeting for all staff of the company. It is hosted by the works council, which invites employees and sets the agenda for the meeting. Nobody from the union may be prevented from attending. Attending the staff meeting is considered work time. Staff meetings are the forum where the works council is accountable and addresses the questions of its constituents. According to the Works Constitution Act (Betriebsverfassungsgesetz), staff meetings must take place once quarterly.

The employer must be invited to the staff meeting and has the right to speak. Once every year, they must also provide information concerning the economic situation of the company, on personnel and community matters, measures for the promotion of gender equality and integration of environmental protection.

› *Works council*

Tips: Standby (Rufbereitschaft)

Standby means: The company must be able to contact you and you have to be available to work during that period. You are free to move outside the company but your employer should know where you will be.

Tip: Better with insurance

Through the employers' liability insurance association, you are, in principle, protected in the event of accidents at work and while commuting. In addition, however, your employer should also have liability insurance covering damage caused by gross negligence. Outside of normal working hours, mistakes and accidents are becoming more common. Do you use your own vehicle for work? Then you should have a guarantee that, in the event of an accident, your employer will also provide a contribution to the costs.

Remuneration without Service

Even if you do not work during the period: You are to be remunerated separately for the standby period. If there is no employer-works council agreement to govern this, this must be arranged separately. We recommend a flat fee.

Standby work counts as work time

If you are asked to work during the standby period, this time will be paid as work time in addition to the flat fee you receive for being on standby. Depending on the collective agreement, you will receive extra payments for working overtime and on Sundays and public holidays.

Is standby compulsory?

Going on standby is in principle voluntary. You are only obligated if this is specified in your contract of employment or collective agreement. In this case, your employer is free to decide who he or she calls upon. However, this choice cannot be made in an arbitrary or discriminatory way. The works council can have a role in deciding the details and the nature of the standby plan.

Important: Your Personal Rest Time

The eleven hour working period can be interrupted by standby work. But: afterwards it is reset to the beginning. Your personal rest time is protected in the Working Hours Act (Arbeitszeitgesetz). It must not be infringed upon.

Tips: Target agreements

Target agreements are a common personnel management instrument. Generally once annually, employers and employees set work targets. In most cases, a variable additional payment is associated with the achievement of these goals.

Target agreements should be fair!

IG Metall's collective bargaining agreements guarantee that the basic conditions for target agreements are correct and that targets cannot simply be set from above. For that reason, a complaint right for employees has also been agreed to. The way in which target agreements are shaped for individual cases is governed by employer-works council agreements. The works council has far reaching co-determination rights and may be able to support you if you are uncertain.

A discussion is mandatory

The employer or a representative must hold a discussion with you or your group when agreeing to the targets. The result must be put in writing.

(Zielvereinbarungen)

Six important points

Ensure that

- the targets are related to your role at work
- you actually have an influence on the criteria for success
- the targets can be measured and evaluated
- not too many targets have to be met concurrently
- targets are not continually increased such that you can no longer achieve them
- the amount that remuneration varies is reasonably limited. It should be paid in addition to your fixed remuneration and not deducted from it!

Use your opportunities

The target agreement meeting with superiors allows you to exert an influence on your earnings and your working conditions. You can, for example, suggest a qualification as a target, or measures that improve your work conditions or your work processes.

Token Strike (Warnstreik)

Token strikes are intended to exert pressure on the employer during pay negotiations to meet the union's demands, to shorten pay negotiations and to avoid an actual strike. The members of the union show that they support the demands that are being made. A token strike does not require a strike ballot to be held. The union will call for this when the competent bodies for collective bargaining negotiations consider the negotiating options to have been exhausted. The token strike is limited in time. Participants do not receive strike pay.

Trade Unions (Gewerkschaften)

Trade unions are voluntary associations of paid employees, the interests of whom they are intended to protect and represent, particularly against employers, but also in political, economic and social matters.

The right to join trade unions is acknowledged by the German constitution. In numerous judgements, the Federal Labour Court has expressed that a trade union must be politically independent and financially autonomous, and has the authority to negotiate rights.

The joining together of employees from a branch of the economy, a particular industry or members of a particular profession – independent of political ties or ideology – is what gives trade unions in Germany their strength. This enables unions to enforce collective agreements and to improve working and remuneration conditions. An important element of pay disputes is the right to strike, guaranteed by the constitution. Unions advise their members and the works council on all issues related to labour law and social security law.

Transfer (Versetzung)

Transfer to a higher level job at the company is generally unproblematic. If, however, you are to be transferred to an equal or lower classified job, certain things need to be considered, for example, pay regulations on salary protection and safeguarding and protection from dismissal.

Prior to every transfer, or any categorisation, the employer must inform the works council, which can complain if, for example, the transfer would disadvantage the employee and cannot be justified for operational reasons specific to the individual.

Travel Time (Fahrzeit)

Travel time is the time you spend using public transport or driving from your workplace in order to reach a client. It counts as work time and must be recompensed. This is based on payment agreements, employer- works council agreements or the employment contract.

The travel time from home to work is a private matter and is not covered.

Union Representatives (Vertrauensleute)

Union Representatives are elected by members of the union at the company. They are expected to maintain the connection between the members, the works council and IG Metall. They inform the works council of demands and the mood of employees and inform employees of decisions made by the works council or the union. All elected works council members are – provided they are also part of IG Metall – also union representatives.

Union representatives look after the interests of IG Metall members in their respective area, play a role when pay demands are made, and recruit new members for IG Metall.

In contrast to the work councils, union representatives have no guaranteed rights, such as company leave or protection from dismissal. Their meetings generally take place outside of working hours.

Warning notice (Abmahnung)

Anyone who infringes labour law risks receiving a warning notice. This may be the case, for example, if someone regularly comes to work late, makes dreadful mistakes at work or disturbs the work of the team with his or her behaviour. The warning notice is a signal from employers that if such behaviour is repeated, it will result in consequences under labour law.

It must set out the precise accusation for the breach of duty. Notice must also be given in writing as to the consequences that are being threatened under labour law if the employee fails to cease behaving in that way. The warning will generally go into the personal file and stay there until the end of the employment contract. Warnings that concern one single occurrence from long ago cannot be used as a reason for dismissal. If you have received a warning you should not simply let the matter rest. Consider whether and how you would like to proceed against it. If there is a works council at your company, you can complain to it and request its support and intercession. In addition, members of the IG Metall receive the support of the local branch office.

Works Council (Betriebsrat)

The works council represents employees within the company. It is elected every four years and negotiates the interests of employees with the employer concerning working hours, working conditions and the company's social benefits.

Employers are required to inform the works council regularly about the economic position of the company. The works council can exert an influence on the distribution of work hours, pay scale grouping, transfers or, for example, the regulation of standby rules. Extremely important: Prior to every dismissal of an employee, the employer must have a hearing with the work council.

› *Employer-works council agreements*

› *Diagram page 32*

Working Hours (Arbeitszeit)

The working hours are the time that the employee must be available. The weekly hours of work for most industries are negotiated between the unions and the employers' association and are established in collective agreements. On average, in the ICT industry this amounts to between 35 and 40 hours per week .

In businesses where no collective agreement applies, the hours of work are commonly agreed upon in the employment contract. According to the working hours law, extensive options for flexibility are available. Thus in a single week it is possible to work up to 60 hours (6 workdays x 10 hours daily), provided that within a balancing period of six calendar months or 24 weeks the average maximum work time of 8 hours daily (48 hours/week) is not exceeded.

The location and distribution of the hours of work, shift work and weekend work are regulated by collective agreements or employer-works council agreements. Details are available from your works council.

Working Hours Accounts (Arbeitszeitkonten)

Work time accounting takes place in a working hours account: The working time quota is compared to the working hours that were actually performed. At the end of the month, the totals are tallied: Extra time is credited; missing hours are taken off and have to be made up.

Working hours accounts have advantages. Employers use them to balance out fluctuations in capacity; employees can use their extra time flexibly for private purposes. With long-term working hours accounts, employees can, for example, save for a sabbatical year with extra time. Life-long working hours accounts allow for early retirement.

Many companies have agreements concerning the way in which working hours accounts are operated and what flexibility employees have.

Youth and Trainee Representation (Jugend- und Auszubildendenvertretung – JAV)

The youth and trainee representation (Jugendauszubildendenvertretung or, simply, JAV) is the elected representative body of trainees who have not yet reached 25 years of age and employees of a company up to 18 years of age.

The JAV can be elected if there are at least five eligible voters in a company. The rights and obligations of the JAV are regulated by the Works Constitution Act (Betriebsverfassungsgesetz).

The works council has to invite the JAV to its meetings and always participate when the interests of trainees and young employees are affected.

Useful websites

For ICT employees:

www.itk-igmetall.de

For engineers and technical experts:

www.igmetall.de/engineering

For crowd-workers and self-employed:

Telephone support and options for evaluating working conditions on internet labour exchanges:

www.faircrowdwork.org

IG Metall homepage with current news and a number of tips:

www.igmetall.de

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