

# Top ten employment law tips for startups in Germany

by [Kaja Herrmann](#)

What should startup founders keep in mind when hiring employees in Germany? Should startups use fixed-term contracts to hire their first employees? What is the best way to bring students onto the team? What can companies do to protect themselves from problems that commonly come with having their top talent leave to work for a competitor? Here are ten employment-related recommendations for startup founders to consider:

## 1. Seek professional guidance

Employment issues can occur very early in a company's life cycle, even at the very beginning when the founders are just getting things going. Therefore, it is wise to consult lawyers familiar with employment issues in Germany, early and often.

## 2. Fixed-term contracts are not the best option for startups

While fixed-term contracts have the advantage of not needing to be terminated on their expiration date if the employee does not work out, they do not bind the employees to the company in the long term. Fixed-term contracts unnecessarily discourage potential workers with good qualifications because they do not offer long-term job security and usually limit an employee's opportunities for growth within the company. To get and secure qualified employees, founders should consider always hiring employees using indefinite employment agreements, even at the earliest stages of the company.

## 3. Students with working student contracts are better than students with mini-jobs<sup>[1]</sup>

Hiring students is a common way to supplement a workforce at a fair price. Students are best hired on a working student contract, which exempts companies from having to pay nursing, health and unemployment insurance contributions. With a mini-job employment contract, this exemption is not available.

## 4. Avoid terminating without notice during the probationary period

Many people think that the probationary period makes things swift and simple when it comes to terminations. But be careful about written employment contracts signed by employees: if the contract does not state otherwise, then startups must observe a termination notice period of at least two weeks even during the probationary period.

## 5. Not every employment agreement can be terminated by the same rules

As soon as an employment contract is signed, it is legally valid. Following the signing of the employment agreement, statutory/contractual notice periods have to be observed. So take a close look at how termination notice requirements are formulated in the employment agreement and what obligations may arise from collective agreements.

## 6. Protection against termination takes effect starting from the 11th employee hired

The following applies to the establishment of a new company: Germany's law on protection against termination applies in full starting with the eleventh employee hired onwards and individually after the completion of six months of service with the company. Accordingly, from the eleventh permanent employee hired onwards, employers can no longer dismiss someone just because, for example, "it just didn't work out properly." Be prepared to justify the termination before the court by providing legally acceptable reasons, including:

- Termination for operational reasons (redundancy/financial reasons)
- Termination due to conduct reasons (performance)
- Termination for personal reasons (certain cases of sickness, etc.)

*Recommendation: Take advantage of the probationary period*

Founders should generally use the probationary period to closely examine and observe the employee. If there are doubts about long-term cooperation, it is not advisable to simply take the risk and see whether the situation might improve.

## 7. Pay attention to rules on job postings

It is essential that companies be aware of Germany's anti-discrimination law, which has been in force since 2006. If, for example, a job advertisement states that an older female accountant with experience is wanted, then in theory, young men may have the legal backing to initiate a complaint of discrimination.

## 8. Agree to rules on overtime right away in the employment agreement

Many startups face the problem of too much work and too few resources – and they often try to solve the problem via overtime hours for employees. In Germany, the handling of these overtime hours must be contractually regulated in advance. Missing compensation can lead to legal disputes that are costly to resolve. If, in addition, the legally stipulated limit for working hours is exceeded, an administrative fine is possible.

*Recommendation: You must be able to prove that you made oral agreements regarding how overtime is handled*

Although oral agreements on handling of overtime (or other employment conditions) are binding under certain circumstances, they must be clearly demonstrable. Without a witness, this is not given. This should be taken into account at all times during discussions with employees.

## 9. Workplace design is not a bonus program

Often with young companies, the number of employees grows, but the office is still stuck in the old lease for a few months and there is simply not enough space. Some employees may end up with a desk in the hallway, or crammed together in a too-small space. In the event of an unexpected visit by the authorities, workstations – even temporary ones – that are not compliant with local laws may lead to a fine. In the area of workplace design, there are a number of points to consider, such as:

- Providing sufficient personal space for each employee. Personal space includes the employee's desk and the area surrounding the desk.
- Having a large enough movement area so that each employee has enough open space to move around the office
- Complying with rules around protecting non-smokers

#### **10. How to protect the company from poaching of top employees**

If the startup is in a competitive sector, good employees are highly sought after. It is not uncommon for competing companies to make offers in order to poach top employees and their know-how. The reality is that such attempts cannot be prevented. However, if the contract contains notice requirements for departing employees, a confidentiality clause, or even possible penalties for non-contractual termination, risks in this area can be minimized.

In conclusion, founders should be aware that, even at the earliest stages of the company, employment law needs special attention in order to avoid wicked surprises at a later stage.

<sup>[1]</sup> A mini-job is a marginal employment relationship in which the monthly salary may not exceed EUR 450.

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