

## **N) Labour Law**

### ***1. Works Constitution Act (Betriebsverfassungsgesetz - BetrVG)***

*of 15 January 1972 (Federal Law Gazette [BGBl.] Part I p. 13), last amended by Act of 10 December 2001 (BGBl. Part I p. 3443)*

#### **Part Four: Participation and Co-Determination by Employees**

##### *Section 75 Principles for the Treatment of Persons Employed in the Establishment*

(1) The employer and the works council shall ensure that every person employed in the establishment is treated in accordance with the principles of law and equity and in particular that there is no discrimination against persons on account of their descent, religion, nationality, origin, political or trade union activity or convictions or gender. They shall ensure that employees do not suffer any prejudice because they have exceeded a certain age.

(...)

#### **Part Five: Special Provisions for Individual Types of Establishment**

##### *Section 118 Application to Enterprises Serving Special Purposes and Religious Communities*

(1) The provisions of this act shall not apply to enterprises and establishments that directly and predominantly

1. pursue political, coalition, confessional, charitable, educational, scientific or artistic objectives; or

(...)

in so far as their application would not be in keeping with the specific nature of the enterprise or establishment. In such cases sections 106 to 110<sup>61</sup> shall not apply and sections 111 to 113<sup>62</sup> shall apply only in so far as they provide for the compensation or mitigation of employees for any financial prejudice sustained as a result of alterations in the establishment.

(2) This act shall not apply to religious communities or to their charitable and educational institutions irrespective of their legal form.<sup>63</sup>

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<sup>61</sup> Note: These provisions govern informing employees of economic matters.

<sup>62</sup> Note: These provisions concern questions of alterations in the establishment.

<sup>63</sup> Note: The Works Constitution Act relates, amongst other things, to the organisation of the works council, the works assembly, the general works council and the concern works council, as well as the appointment of youth and trainee representation and worker participation and co-determination.

**2. Act on Employees Co-determination (Gesetz über die Mitbestimmung der Arbeitnehmer - Mitbestimmungsgesetz - MitbestG)**

of 4 May 1976 (Federal Law Gazette [BGBl.] Part I p. 1153), last amended by Act of 23 July 2001 (BGBl. Part I p. 1852)

*Section 1 Enterprises Covered*

(...)

(4) This act shall not apply to enterprises that directly and predominantly

1. pursue political, coalition, confessional, charitable, educational, scientific or artistic objectives; or
2. serve purposes of reporting or expression of opinions to which article 5 para 1 second sentence of the Basic Law applies.

This act<sup>64</sup> shall not apply to religious communities or to their charitable and educational institutions, irrespective of their legal form<sup>65</sup>.

**3. Act on Representative Committees of Executive Employees (Gesetz über Sprecherausschüsse der leitenden Angestellten - Sprecherausschußgesetz - SprAuG)**

of 20 December 1988 (Federal Law Gazette [BGBl.] Part I p. 2312), last amended by Act of 21 December 2000 (BGBl. Part I p. 1983)

*Section 1 Establishment of Representative Committees*

(...)

(3) This act shall not apply to

1. administrative bodies and establishments of the Federation, Länder, municipalities and other corporations, institutions and foundations under public law, as well as
2. religious communities and their charitable and educational institutions, irrespective of their legal form.

*Section 27 Principles Regarding the Treatment of Executive Employees*

(1) The employer and the representative committee shall ensure that all executive employees in the establishment are treated in accordance with the principles of law and equity, and

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<sup>64</sup> Note: The Act on Employees Co-determination largely contains provisions relating to the organisation and the rights and duties of the board of directors and of the statutory representative body of enterprises.

<sup>65</sup> Note: Comparable provisions regarding the inapplicability of the act in question to churches and other religious communities are contained inter alia in section 1 of the Industrial Safety Law (Arbeitsschutzgesetz) of 7.8.1996 (BGBl. Part I p. 1246) last amended on 27.12.2000 (BGBl. Part I p. 2052), section 18 of the Continuation of Wage Payment Act (Lohnfortzahlungsgesetz) of 27.7.1969 (BGBl. Part I p. 946), last amended on 20.12.1996 (BGBl. Part I p. 2110), section 15 of the Workplace Act (Arbeitsplatzgesetz) in the new version of 14.02.2001 (BGBl. Part I p. 253)] and section 1 of the Holiday Pay Act (Urlaubsgeldgesetz) of 15.11.1977 (BGBl. Part I pp. 2117 and 2120), in the proclamation of 15.12.1998 (BGBl. Part I p. 3648), last amended on 30.11.2000 (BGBl. Part I p. 1638).

particularly that they are not subjected to discrimination based on descent, religion, nationality, origin, political or trade union activity or convictions or gender. They shall ensure that employees do not suffer any prejudice because they have exceeded a certain age.

(...)

**4. Federal Act on Staff Representation (*Bundespersönalvertretungsgesetz - BPersVG*)**  
*of 15 March 1974 (Federal Law Gazette [BGBl.] Part I. p. 693), last amended by Act*  
*of 9 July 2001 (BGBl. Part I. p. 1510)*

**Part II: Staff Representative Bodies in the Länder**

*Section 105 [Equal Treatment of Employees]*

Staff representative bodies, along with the head of department, shall ensure objective and just treatment of employees' concerns. In particular, no employee shall be given preferential treatment or suffer prejudice based on descent, religion, nationality, origin, political or trade union activity or convictions or gender or personal relationships. The head of department and the staff representative body shall refrain from all and any party political activity in the department; the handling of collective wage rates, salary and social matters shall not be affected hereby.

**Part IV: Final Provisions**

*Section 112 [Application to Religious Communities]*

This act<sup>66</sup> shall not apply to religious communities and their charitable and educational institutions, irrespective of their legal form; the independent adoption of staff representation regulations shall be left up to them.

**5. Social Code (*Sozialgesetzbuch - SGB*) Third Book (III): Employment Promotion**  
*of 24 March 1997 (Federal Law Gazette [BGBl.] Part I. p. 594), last amended by Act*  
*of 20 December 2001 (BGBl. Part I. p. 401)*

**Chapter Two: Compulsory Insurance**

*Section 26 Other Compulsorily Insured Persons*

(1) Persons subject to compulsory insurance are

(...)

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<sup>66</sup> Note: This Act regulates the organisation, rights and duties, as well as the responsibilities, of staff representative bodies in Federal service, and lays down the basic conditions for the relevant Land law provisions relating to staff representative bodies in the Länder.

5. persons who are not regular members of clerical brotherhoods or similar religious confraternities and who receive out-of-school training for service in such a brotherhood or similar religious confraternity.

(...)

#### *Section 27 Employees Exempt from Insurance*

(1) Persons exempt from insurance shall be those employed as

(...)

2. clerics of religious communities that have been recognised as corporations under public law, if in case of illness they are entitled under the legal provisions or principles applicable to civil servants to continued payment of remuneration and allowances,
3. teachers employed as their main occupation in private approved schools, if in case of illness they are entitled under the legal provisions or principles applicable to civil servants to continued payment of remuneration and allowances,
4. statutory members of clerical brotherhoods, deaconesses and similar persons if they engage in sick-nursing, education or other non-profit work on predominantly religious or moral grounds and do not receive more than their free board and lodging or a small sum by way of remuneration that merely suffices to cover their direct needs in terms of accommodation, food, clothing and the like,

(...)

### **Chapter Three: Counselling and Placement**

#### *Section 36 Principles of Placement*

(1) The employment office may not place persons if a training or employment relationship is to be established that violates a statute or is against good morals.

(2) The employment office may take into consideration limitations imposed by the employer on placement with regard to gender, age, state of health or nationality of the person seeking training or employment, or similar characteristics which as a rule do not pertain to vocational skills, only if these limitations are indispensable for the type of work to be performed. If the employer is a religious community, limitations on placement in that community and in its charitable and social institutions may furthermore be taken into account with regard to affiliation to a religious community. A limitation in respect of membership in a trade union, political party, religious community or comparable association may otherwise only be taken into consideration if

1. the training place or employment exists in an enterprise or establishment serving special purposes in terms of section 118 subsection 1 sentence 1 of the Works Constitution Act, and
2. the type of work to be performed justifies such a limitation.

(...)

### *Section 42 Limitation on the Right of Interrogation*

The employment office may not collect data on persons seeking training or employment which an employer may not request prior to establishment of a training or employment relationship. Data on membership in a trade union, political party, religious community or comparable association may be collected only from the persons seeking training and employment. The employment office may only collect and use these data if

1. placement in a training place or employment is scheduled
  - a) in an enterprise or establishment serving special purposes in terms of section 118 subsection 1 sentence 1 of the Works Constitution Act, or
  - b) in a religious community or in one of its charitable or educational institutions,
2. the person seeking training or employment is willing to be placed in such a training place or employment, and
3. in a placement made pursuant to No. 1 (a) the type of work to be performed justifies the limitation.

## **Chapter Four: Employee Benefits**

### *Section 135 Special Consideration in Other Compulsory Insurance Relationships*

The basic consideration shall be

(...)

6. in periods in which insurance was compulsory because of out-of-school training of non-statutory members of clerical brotherhoods or similar religious confraternities for service in such a brotherhood or similar religious confraternity, the consideration on which the assessment of contributions was based.

### *Section 136 Consideration for Performance*

(1) Consideration for performance rendered shall be the assessment payment reduced by the statutory deductions from compensation normally arising for employees.

(2) Deductions from payment shall be taxes, contributions to social security insurance and employment promotion, as well as other normally arising deductions of relevance at the beginning of the calendar year, to the extent that the second sentence Nos. 2 and 3 state no derogations. In this regard, the basis shall be

(...)

2. for the church tax, the tax assessed according to the lowest rate of assessment for church tax effective in the Länder in the previous year,

(...)

## **Chapter Ten: Funding**

### *Section 345 Contributory Earnings of Other Persons Subject to Compulsory Insurance*

Contributory earnings shall be,

(...)

4. as to persons who have received out-of-school training as non-statutory members of clerical brotherhoods or similar religious confraternities for service in such a brotherhood or similar religious confraternity, the consideration amounting to the given benefits in cash and remuneration in kind,

(...)

*Section 347 Payment of Contributions for Other Insured Persons*

Contributions shall be paid

(...)

4. by the religious community or similar religious society for non-statutory members of clerical brotherhoods or similar religious confraternities during the period of their out-of-school training for service in such a brotherhood or similar religious confraternity,

(...)

**6. Working Hours Act (*Arbeitszeitgesetz - ArbZG*)**

*of 6 June 1994 (Federal Law Gazette [BGBl.] Part I. p. 1170), last amended by Act of 21 December 2000 (BGBl. Part I. p. 1983)*

**Part One: General Provisions**

*Section 1 Purpose of the Act*

The purpose of the act shall be,

1. to guarantee the safety and health protection of employees in the setting of working hours and to improve the basic conditions for flexible working hours, as well as
2. to protect Sundays and state-recognised holidays as restful and spiritually-edifying periods for employees.

**Part Two: Weekday Working Hours and Time Off**

*Section 7 Derogating Regulations*

(...)

(4) The churches and public-law religious communities may provide in their regulations for the derogations<sup>67</sup> stated at subsections 1 and 2.

(...)

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<sup>67</sup> Note: The derogations referred to concern possible modifications of weekday working hours.

### **Part Three: Work Ban on Sundays and Holidays**

#### *Section 9 Work Ban on Sundays and Legal Holidays*

- (1) Employees may not work on Sundays and legal holidays from midnight to midnight.
- (2) In multi-shift businesses with regular day and night shifts the beginning or end of the Sunday or holiday rest period may be put ahead or back by up to six hours if no business is conducted in the 24 hours following the beginning of the rest period.
- (3) For drivers and passengers, the beginning of the 24-hour Sunday and holiday rest period may be brought forward by up to two hours.

#### *Section 10 Employment on Sunday and Legal Holidays*

(1) To the extent that work cannot be performed on weekdays, notwithstanding section 9 employees may work on Sundays and legal holidays

(...)

6. in the case of non-commercial activities and events of the churches, religious societies, associations, clubs, political parties and other similar organisations,

(...)

#### *Section 13 Authorisation, Order, Allowance*

(...)

(3) The supervising authority may

1. determine whether employment is permissible in accordance with section 10,

(...)

and give orders relating to the hours of employment with regard to the time set for public religious service.

(...)

### **Part Six: Special Provisions**

#### *Section 18 Non-Application of the Act*

(1) This act shall not apply to

(...)

4. the liturgical purview of the churches and religious communities.

(...)

**7. Vocational Training Act (*Berufsbildungsgesetz - BBiG*)**  
*of 14 August 1969 (Federal Law Gazette [BGBl.] Part I. p. 1112), last amended by Act  
of 10 December 2001 (BGBl. Part I. p. 2992)*

**Part Six: Special Provisions for Certain Economic Sectors and Occupations**

**Part Four: Vocational Training in the Public Service**

*Section 84 Competent Body*

(1) In the public service the supreme Federal authority shall determine for the Federation the competent body for its sphere of competence

1. in cases falling under sections 23, 24 and 45, as well as sections 23a, 24 and 41a of the Craftwork Ordinance (Handwerksordnung),
2. for vocational training in trainee occupations other than those covered by sections 73 to 75, 79, 87, 89, 91 and 93;

this shall also apply to the corporations, institutions and foundations under public law which are subject to supervision on the part of the Federation; the Länder shall determine the competent body for their sphere of competence as well as for the municipalities, the municipal associations and for the other corporations, institutions and foundations under public law which are subject to supervision on the part of the Länder.

(2) Subsection 1 shall apply mutatis mutandis to trainee occupations in which training is provided in accordance with the training directives of the public service within the purview of the churches and other religious communities under public law or outside the public service.

(...)

*Section 84a Competent Body for the Purview of the Churches and Other Religious Communities under Public Law*

The churches and other religious communities under public law shall determine for their purview the competent body for vocational training with regard to training occupations other than those listed in sections 73 to 75, 79, 84, 89, 91 and 93.

**8. Juvenile Workers Protection Act (*Gesetz zum Schutze der arbeitenden Jugend - Jugendarbeitsschutzgesetz - JArbSchG*)**  
*of 12 April 1976 (Federal Law Gazette [BGBl.] Part I. p. 965), last amended by Act  
of 21 December 2000 (BGBl. Part I. p. 1983)*

**Part Three: Employment of Juveniles**

*Section 17 Rest on Sunday*

(1) Juveniles may not be employed on Sundays.



- (2) The employment of juveniles on Sundays shall be permissible only
1. in hospitals, old people's homes, nursing homes, and children's homes,
- (...)

*Section 18 Rest on Legal Holidays*

- (1) Juveniles may not be employed on 24 and 31 December after 2 p.m. and on legal holidays.
- (2) In cases falling under section 17 subsection 2, except for 25 December, 1 January, the first Easter holiday, and 1 May, the employment of juveniles shall be permissible on legal holidays.
- (...)

**9. Act on the Promotion of Early Retirement Benefits**  
**(Gesetz zur Förderung von Vorruhestandsleistungen - Vorruhestandsgesetz - VRG)**  
*of 13 April 1984 (Federal Law Gazette [BGBl.] Part I. p. 601), last amended by Act  
of 5 October 1994 (Part I. pp. 2911 and 2950)*

*Section 1 Basic Principle*

- (1) The Federal Institution for Labour (Bundesanstalt für Arbeit) shall grant allowances to employers towards the costs of early retirement benefits for employees who have reached the age of 58 and have ended their gainful employment.
- (...)

*Section 2 Eligibility Requirements*

- (1) The eligibility requirements for a subsidy shall be that
1. the employer has, on the basis of a collective agreement, an arrangement of the churches and public-law religious societies or an agreement with the employee
    - a) paid to the retired employee early retirement benefits amounting to at least 65 per cent of gross pay in terms of section 3 subsection 2, and
    - b) must pay early retirement benefits until the end of the calendar month in which the retired employee has reached the age of 65, at the latest until the end of the calendar month preceding the month as of which the retired employee may claim old-age pension before reaching the age of 65, settlements under the miners' pension insurance scheme, or similar benefits under public law,
- (...)