

GERMAN LAW NEWSFLASH – FEBRUARY 2015

NATIONAL MINIMUM WAGE LAW ENACTED IN GERMANY

The National Minimum Wage Law (Mindestlohngesetz) became effective as of January 1st 2015. It establishes a nationwide minimum wage of 8.50 € per hour before taxes, with a few exceptions. Many employers fear the increased cost of wages and extensive duties of documentation. An independent commission will readjust the minimum wage on a regular basis.

HOW IT USED TO BE

Before the new law, there was no uniform minimum wage for German employees. There were nationwide collective bargaining agreements in certain industries, which established a minimum wage for the sector in question. However, a majority of employees could only take legal action successfully for a higher wage if their compensation was so low to be found "offending against good morals" by the courts. Even wages as low as 1.54 € per hour were sometimes found to be acceptable, if no malicious intent by the employer could be proven. Since many employees had to rely on social welfare to cover their cost of living, both tax payers and employees had a stake in establishing a national minimum wage.

HOW IT IS NOW

Since January 1 2015, the nationwide minimum wage law (Mindestlohngesetz) is effective. Every employee within the scope of the law has to be paid at least 8.50 € per hour before taxes for the time being. An independent Minimum Wage Commission (Mindestlohnkommission), consisting of representatives of employers and employees, will frequently adjust the rate based on economic and social factors. There are still temporary exceptions for certain industries (i.e. newspaper deliverymen or hairdressers). Employees in special positions, such as apprentices, interns who take part in an educational program, volunteers in journalistic enterprises, or people who were unemployed for more than a year, are not entitled to the minimum wage. The main argument against a nationwide minimum wage was a fear of excessive bureaucracy. Employers face extensive duties to document and archive the hours worked by their minimum wage employees. These requirements are especially high for employers in industries with a history of low wages and general non-compliance with labour laws, such as construction, cleaning



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services or logistics.

The lawmakers held this to be necessary in order to prevent circumvention of the minimum wage law. However, employers argue that the profitability of their enterprises will be severely diminished. Especially struggling small businesses fear that the additional costs of extra bookkeeping and retention of records, in addition to higher wages, will drive them out of business. Changes in favor of small businesses have already been proposed by leaders of the governing CDU/CSU party (Christian Democrats). But many unions and other labour organizations also criticized the law, be it for the many exceptions of certain job types, or because they find the constitutional principle of freedom to collective bargaining to be compromised.

HOW IT WILL BE IN THE FUTURE

National minimum wage laws have been effective for a long time in a wide variety of economically successful countries, such as the USA, China, India and the UK. From these experiences, it can be said that markets will not suffer long term damage by a reasonable minimum wage. Additionally, minimum wage laws often do not account for inflation, which shifts the balance in favor of employers in the long term. Steady reevaluation of the minimum wage rate by the Minimum Wage Commission is supposed to eliminate this effect. It remains to be seen how this new form of "wage negotiation" will play out. The first readjustment will be decided on in August 2016 and become effective as of January 1st 2017.

At that point, many of the temporary restrictions of the law will have expired. Thus, the effects of the minimum wage law will become clearer, since more employees will enjoy its protection and a trend concerning the adjustments by the Minimum Wage Committee will be established.

This newsflash was originally published by Magnusson Berlin LLP, of which Dr. Thomas Kaiser-Stockmann is also the Managing Partner.