

## Germany

### 1. Government requirements

#### Registration requirements

##### Registration for wage tax

- A wage tax number must be applied for.
- The authority responsible for applications is the tax office (in German: "Betriebsstättenfinanzamt") where the company is located. Even if there are several offices and stores, there should be one office where the main decisions about salaries, bonuses, etc., are made and calculated. This office is to be registered as the main business establishment for wage tax purposes.
- Wage tax calculation is based on the German income tax law (in German: "EStG - Einkommenssteuergesetz") together with wage tax regulations (in German: "LStR - Lohnsteuerrichtlinien"). The tax year is the same as the calendar year.
- A tax number can be applied for from the responsible tax authorities either by phone or letter. The authority will then send a questionnaire for the setup of the company data and will issue a tax number after approximately three to four weeks on the basis of the data provided.
- An application for a tax number can be prepared or supported by a tax consultancy. However, the questionnaire must be signed by an authorized person of the company.

##### Registration as an employer for social security insurance

- The company number must be applied for from the Federal Employment office.
- Social security insurance is based on the Social Security Law (in German: "SGB - Sozialversicherungsgesetzbuch").
- A company number can be applied for either by phone or online and is available immediately after application, on the same day. No registration with the social security institutions is necessary upfront as this is processed through the social security registration of the employee at the start of employment.
- An application for a company number can be made by a tax consultancy. No signature by an authorized person of the company is necessary.

##### Registration as an employer for statutory accident insurance

- An employer insurance number must be applied for at the responsible insurance authority, along with a classification for insurance (risk tariff).
- Insurance is based on the SGB.
- The application can be made either by phone or letter. The authority will then send a questionnaire for the setup of the company data and will issue an insurance number after approximately three to four weeks on the basis of the data provided.
- The application for an insurance number can be prepared or supported by a tax consultancy. However, the questionnaire must be signed by an authorized person of the company.

#### Ongoing compliance requirements

##### Filing and payment obligations

Payroll filing obligations are mentioned in the table included in this chapter.

##### Tax rate

No wage tax is imposed on earnings up to EUR9,744.00 per annum in 2021 — this amount increases almost every year. There is no linear taxation in Germany. German taxation is calculated in a progressive and proportional manner. This means that with every Euro the employee earns more, the income tax percentage is increasing — taxation is increasing smoothly in the lower area of income, and is increasing even more in the higher area of income. The marginal tax rate starts at 14% on earnings higher than EUR9,744.00 per annum and ends at the top income tax rate of 45% with a solidarity surcharge of 5.5% (which is equal to an effective

47.48%) on earnings higher than EUR274,613.00 per annum. (Note: From 2021, the solidarity surcharge is no longer valid for middle and lower incomes so that up to a taxable income of EUR61,717 no solidarity surcharge will be due in the future.)

There are no fixed percentages for wage tax existing in Germany, but tax brackets exist.

The list of wage tax brackets is as follows:

- Wage tax class 1 — granted to single people (or married people, who live separately)
- Wage tax class 2 — granted to single people, who have at least one child
- Wage tax class 3 — granted to married people if the spouse is accepting wage tax class 5
- Wage tax class 4 — granted to married people if the spouse is accepting wage tax class 4
- Wage tax class 5 — granted to married people if the spouse is accepting wage tax class 3
- Wage tax class 6 — granted to all people who work for two employers at the same time

The wage tax bracket is electronically transmitted to the payroll software of the employer based on the tax ID number. If no tax ID number is provided, tax class VI should be used until receipt of proper data.

## Social security insurance rates and obligations

The mandatory German social security branches are pension care, unemployment, health care and nursing care, as well as accident insurance.

The expenses of pension, unemployment, health care and nursing care insurances are distributed differently by the employee and employer. Statutory accident insurance is borne at 100% by the employer. The calculation has to be processed on the basis of the gross salary each month. There are different percentage rates for each of the mandatory social security branches and social security ceilings which are changing each year.

## 2. Pension requirements

### Registration requirements

#### Statutory pension insurance

There is an electronic data exchange process with the agency responsible for collecting the social security contributions. The deadline for registration of the employee is six weeks after the start of employment. The deadline for submitting the yearly information is 15 February of the following year. Both registrations are to be done via electronic data transmission through the payroll software.

#### Voluntary company pension schemes

Additional company pension schemes can be set up. However, conditions and rates are granted on a voluntary basis by the company and are not based on legal requirements and obligations.

In general, any amendment with regard to employment has to be provided via electronic data transmission to the insurance authority, e.g., contributions as calculated through payroll each month, hire and termination information, change in hours or any change in the employment contract type, or insurance status.

Refer to page 149 for a short overview of the pension schemes.

The company pension scheme (bAV) enables the subsidized building of a supplementary pension via the employer. The company pension scheme can be financed by the employer or by the employee by waiving part of the gross earnings in favor of the pension scheme. As a rule, contributions are made jointly by the employer and employee. No matter who pays the contributions, the employee pays less taxes and social security contributions. According to the company pension regulations, in cases of deferred compensation, the employer is obliged to provide an additional amount of 15% of the converted salary as an employer's contribution to the pension fund, the pension fund or for direct insurance if the deferred compensation leads to

savings in social security contributions. Contribution to the company pension scheme is tax-free and to a certain extent free of social security contributions during the savings phase. Therefore, the later pension has to be fully taxed.

### **1. Direct insurance**

Contributions are tax- and social security contribution-free up to 4% of the respective applicable income threshold WEST (2021: EUR85,200); a further 4% p.a. is tax-free.

### **2. Pension fund**

Contributions are tax- and social security contribution-free up to 4% of the respective applicable income threshold WEST (2021: EUR85,200); a further 4% p.a. is tax-free. Tax- and duty-free if contributions are paid to assume a pension obligation.

### **3. Support fund**

Contributions in unlimited amounts free of tax and social security contributions. In the case of deferred compensation, the exemption from social security contributions is limited to a maximum of 4% of the contribution assessment ceiling WEST (2021: EUR85,200).

### **4. Direct commitment**

Unlimited contributions free of tax and social security contributions. In the case of deferred compensation, the exemption from social security contributions is limited to a maximum of 4% of the WEST income threshold (2021: EUR85,200).

## **3. Employment obligations**

### **Minimum pay**

- The legal wage per hour for the year 2021 amounts to at least EUR9.50, further increases are planned but not yet adopted by the legislator.
- It is applicable to all companies with exemptions for the following employees:
  - Certain types of interns
  - Children and young employees who have not completed their vocational training
  - Trainees within the meaning of the Vocational Training Act
  - Long-term unemployed people within the meaning of section 18, subsection 1 of the Social Security Law III
  - Volunteering workers
- Minimum pay should be determined on the basis of the working time accounts (documentation on the number of hours worked per week per month) or, if these do not exist, on the basis of the fixed working hours according to the employment contracts.

Non-compliance can result in fines of up to EUR500,000 and criminal liability for managing directors and executive boards.

### **Vacation entitlement**

Generally, vacation entitlement is regulated by law (in German: "BUrlG- Bundesurlaubsgesetz") and also through employment contracts or collective agreements. Vacation is always related to working days, not hours. Full-time employees are entitled to full-day vacations, while parttime employees have their vacations adjusted accordingly. Employees in full-time employment are entitled to a minimum of 4 weeks (20 workdays) of holiday per calendar year.

### **Employment contract**

The employee not only has the obligation to perform his or her contractual work duties but also the right to appropriate employment. If the employment is not possible due to the temporary failure of a machine, the agreed salary must still be paid because the risk of unavailability of the required equipment is borne by the employer. Likewise, the employer must adhere to the agreed working time if the employment contract does not explicitly provide for flexibility. However, flexible working hours also require timely agreement between

the employer and his or her employees. If the employee is no longer able to exercise his or her duties for health reasons, he or she must be transferred to another place in the company within the scope of the company's possibilities.

### **Works council**

The establishment of a works council is one of the fundamental rights of employees. The employer must allow appropriate election and enable the members of the elected body to exercise their functions. Likewise, every employee has the right to visit the works council during working hours.

### **Holiday**

Holiday planning requires in-house arrangement so that not too many employees apply for leave at the same time. Rejection of a holiday application for urgent operational reasons is in principle possible, but the operational necessity may not be caused by negligence. Thus, the employer must employ enough staff or be willing to employ temporary workers in order to compensate for times when the employees have a higher-than-average sickness rate.

### **Data security**

The employer holds a variety of different employee data. This may only be used for the purpose for which it was obtained. A transfer of employee data is not possible in principle, exceptions require the express consent of the employee. The prohibition of the passing on of personal data concerns not only transmission to third parties, but also includes unnecessary transmission to other departments of the company. If an employee is dealing with sensitive data, he or she must be expressly committed to data protection. In addition, there is the obligation to appoint a data protection officer, who prevents or at least reveals violations of data protection.

### **Health and the value of the worker's work**

The employer's duty to take care of the worker is regulated by different laws and covers both the health and value of the worker's work. If the transport of personal belongings to the workplace is not permitted or not possible, lockable cabinets must be provided. Workers with activities that cause pollution of the body must be provided with showers. The regular cleaning of toilets is also part of the employer's obligation to respect its employees. An essential element of the employer's obligation to provide care is to ensure compliance with occupational health and safety regulations. Both the daily maximum permissible working time and the time between two work shifts are regulated by law; exceptions are possible only in absolute emergencies. In the case of a recognizable illness of an employee, or if he or she is unable to work properly, the employer must influence him or her to visit the doctor.

### **Rehabilitation management after long sickness**

After an extended illness, the company has to offer rehabilitation management to the employee. This includes a consultation as well as examination, even if operational reasons caused the circumstances which led to the illness.

## **4. Payroll requirements**

### **Payment**

A central duty of the employer is the payment of the agreed wage — the amount cannot be less than legal regulations, such as the minimum wage in many industries. Punctual payment and correct calculation of the amount is also an element of compulsory performance. If, instead of a fixed salary, the actual working time is paid, the employer must ensure that this is correctly recorded. According to the law, punctuality in money transactions is highly important. If the employee forgets to communicate his or her new bank account, the amount must be retransmitted as soon as possible. Transfer to the following month's salary is not allowed. Likewise, an erroneously inadequate transfer must be corrected immediately; in the case of minor amounts,

transfer to the subsequent period can only be made if the employee expressly agrees. The obligation to pay includes the granting of paid leave as well as the payment of wages in the case of the employee's incapacity for work.

## Social security contributions and wage tax

Contributions to social insurance must be paid by both the employer and the employee. The employer carries out the technical implementation of the deduction of social security contributions and wage tax, in addition, the employer may even be personally liable for income tax not being paid to the authorities.

## 5. Banking requirements

Data files for payroll payments processed via data transmission to the bank can be prepared by EY payroll software, also if a foreign client or employee bank account is to be used. In general, only a valid IBAN number and BIC number is needed in order to prepare payroll bank files for the client (Germans as well as foreign clients within Europe).

Kind of pension	Wage tax		Social security
	Contribution phase	Payout phase	Contribution phase
<b>Direct commitment:</b> ("Direktzusage")	Contributions by the employer as well as from salary waiver <b>Free of wage tax</b>	Payments by the employer to the employee <b>Liable to wage tax</b>  On basis of individual tax rate; tax allowances for pensions are to be deducted	<b>Free of social security insurance</b> if <u>not</u> from salary waiver  If employee-funded (by salary sacrifice), premiums are free of social security insurance only up to 4% of the income ceiling for contributions to statutory pension insurance – for 2017 up to €3,048
<b>Support fund:</b> ("Unterstützungskasse")	Contributions by the employer as well as from salary waiver <b>Free of wage tax</b>	Payments by the insurance company to the employee <b>Liable to wage tax</b>  On basis of individual tax rate; tax allowance for pensions is to be deducted	<b>Free of social security insurance</b> if <u>not</u> from salary waiver  If employee-funded (by salary sacrifice), premiums are free of social security insurance only up to 4% of the income ceiling for contributions to statutory pension insurance – for 2017 up to €3,048

<b>Pension fund:</b> ("Pensionskasse")	<p>If employee-funded (by salary sacrifice), premiums are free of social security insurance only up to 4% of the income ceiling for contributions to statutory pension insurance – for 2017 up to €3,048  <b>Free of wage tax</b></p> <p>Contributions by the employer in addition up to €1,800  <b>Free of wage tax</b>          if pension entitlement after year 2004</p> <p>Higher contribution by the employer  <b>Liable to wage tax</b>          On basis of individual tax rate; tax allowances for pensions are to be deducted</p> <p>Contribution from salary waiver up to €1,752 can be taxed at a flat rate of 20% if pension entitlement before year 2005 and disclaimer from employee is provided</p>	<p>Payments by the insurance company to the employee  <b>Liable to income tax</b> at full amount and to be declared as other income (section 22 No. 5 Income Tax Law) through private income tax return</p> <p>Payments by the insurance company to the employee  <b>Liable to income tax</b> at full amount and to be declared as other income (section 22 No. 5 Income Tax Law) through private income tax return</p> <p>Payments by the insurance company to the employee  <b>Liable to income tax</b>, to be declared as other income with the profit share (section 22 No. 1 s.3 Income Tax Law) through private income tax return</p>	<p>If employee-funded (by salary sacrifice), premiums are free of social security insurance only up to 4% of the income ceiling for contributions to statutory pension insurance – for 2017 up to €3,048</p> <p><b>Liable to social security insurance</b></p> <p><b>Free of social security insurance</b> up to €1,752 if paid in addition to the base salary</p>
<b>Direct insurance:</b> ("Direktversicherung")	<p>If employee-funded (by salary sacrifice), premiums are free of social security insurance only up to 4% of the income ceiling for contributions to statutory pension insurance – for 2017 up to €3,048  <b>Free of wage tax</b></p> <p>Contributions by the employer in addition up to €1,800  <b>Free of wage tax</b>          if pension entitlement after year 2004</p> <p>Higher contribution by the employer  <b>Liable to wage tax</b>          On basis of individual tax rate; tax allowances for pensions are to be deducted</p> <p>Contribution from salary waiver up to €1,752 can be taxed at a flat rate of 20% if pension entitlement before year 2005 and disclaimer from employee is provided</p>	<p>Payments by the insurance company to the employee  <b>Liable to income tax</b> at full amount and to be declared as other income (section 22 No. 5 Income Tax Law) through private income tax return</p> <p>Payments by the insurance company to the employee  <b>Liable to income tax</b> at full amount and to be declared as other income (section 22 No. 5 Income Tax Law) through private income tax return</p> <p>Payments by the insurance company to the employee  <b>Liable to income tax</b>, to be declared as other income with the profit share (section 22 No. 1 s.3 Income Tax Law) through private income tax return</p>	<p>If employee-funded (by salary sacrifice), premiums are free of social security insurance only up to 4% of the income ceiling for contributions to statutory pension insurance – for 2017 up to €3,048</p> <p><b>Liable to social security insurance</b></p> <p>Free of social security insurance up to €1,752 if paid in addition to the base salary</p>

What is to be filed when, with which authority and how?					
What is to be filed?	For which period?	When is it to be filed?	With which authority must it be filed?	How is it to be filed?	When is the payment due?
<b>Payroll</b>					
<b>Wage tax return monthly</b> ("Lohnsteueranmeldung")	If the total wage tax for the calendar year is more than €1000, a monthly return for the wage tax arising from the first calendar day of the month to the last calendar day of the month has to be filed.	By the 10th of the following month (e.g., for June, by 10 July)	With the tax authority where the company has been registered and/or the local tax authority of the city where the company is located	The return has to be transmitted electronically to the authority.	By the 10th of the following month (e.g., for June, by 10 July)
<b>Wage tax return quarterly</b> ("Lohnsteueranmeldung")	If the total wage tax for the calendar year is more than €1,000, but less than €4,000, a monthly return for the wage tax arising from the first calendar day of the quarter to the last calendar day of the quarter has to be filed.	By the 10th of the month after the past quarter (e.g., for the first quarter, by 10 April)	With the tax authority where the company has been registered and/or the local tax authority of the city where the company is located	The return has to be transmitted electronically to the authority.	By the 10th of the month after the past quarter (e.g., for the first quarter, by 10 April)
<b>Wage tax return yearly</b> ("Lohnsteueranmeldung")	If the total wage tax for the calendar year is less than €1000, a yearly return for the wage tax arising from the first calendar day of the year to the last calendar day of the year has to be filed.	By 10 January the following year	With the tax authority where the company has been registered and/or the local tax authority of the city where the company is located	The return has to be transmitted electronically to the authority.	By 10 January the following year
<b>Premium statement for social security insurance</b> (always monthly) ("Beitragsnachweis")	A monthly statement for the social security insurance premiums arising from the first calendar day of the month to the last calendar day of the month has to be filed.	By the fifth last working day of the corresponding month	With the health insurance companies of the employees	The statement has to be transmitted electronically to the health insurance companies.	By the third last working day of the corresponding month
<b>Statement for compulsory accident insurance</b> ("Meldung für die Berufsgenossenschaft")	A yearly statement for the total wages paid from the first calendar day of the year to the last calendar day of the year has to be filed in order to enable the authority to assess the yearly premium.	By 11 February of the following year	With the accident insurance company where the company has been registered	The statement has to be transmitted electronically to the accident insurance company.	By the date is listed on the premium assessment notice which is sent by the authority to the company after the filing of the statement
<b>Statement for the compensation levy for non-employment of severely handicapped persons</b> ("Schwerbehindertenabgabe")	Only needed for companies with more than 20 employees. A yearly statement for the total wages paid from the first calendar day of the year to the last calendar day of the year has to be filed in order to enable the authority to assess the yearly premium.	By 31 March of the following year	With the Federal employment office where the company is registered	The statement has to be transmitted electronically to the federal employment office.	By 31 March of the following year