

Overview	Legal Change	Action required
<p>Claims Limitation Clauses in Employment Contracts</p> <p>A recent Labour Court ruling (September 2018) has materially changed the rules on the enforceability of forfeiture clauses placed in employment contracts which seek to limit the time by which an employee can bring a claim.</p>	<p>A claims limitation (or forfeiture) clause in an employment contract that does not explicitly exclude claims for statutory minimum wage, is invalid. The claim limitation then reverts to the statutory law limitation period only. Depending on the type of claim this can be as much as three years from the claim arising.</p> <p>General comment: Forfeiture clauses are common in Germany employment contracts, often requiring claims to be brought within 3 months of the due date. To be valid they must be clear and understandable and not unfairly prejudice the employee. Now they must state clearly that the limitation does not apply to claims for statutory minimum wage.</p>	<ul style="list-style-type: none"> ● As a priority, you should review and adjust template/standard and existing German employment contracts. ● The limitation/forfeiture clause must expressly exclude claims for statutory minimum wage.
<p>Repayment of Bonus</p> <p>A contractual clause to claim repayment of a bonus if the employee leaves within a period after the bonus payment date, may be invalid.</p>	<p>A Court ruling in the summer made the distinction between a bonus reclaim provision in a collective bargaining agreement and one solely in the employment contract. In the latter case the employee is treated as a consumer and subject to greater Court protection while a similar provision in a CBA negotiated between an employer's organisation and a trade union will not be challenged.</p>	<p>Review the relevant CBA. If there is no bonus reclaim provision it is likely that such a term in the employment contract alone will be void. You may choose, however, to leave it in.</p>
<p>Gender neutrality</p> <p>The German Constitutional Court has recognised a gender that is neither male or female, the third gender known as “inter” or diverse.”</p> <p>New regulations reflecting this should come in to force on January 1st, 2019.</p>	<p>The Court ruled that there must be an option to register a child at birth as “inter”. People can no longer be compelled to identify as either male or female. Under existing rules, discrimination on grounds of gender is prohibited. In Germany, strict liability damages can be claimed. This will now apply to discrimination against inters.</p>	<ul style="list-style-type: none"> ● Job adverts should be reviewed for potential discrimination against inters; make clear that all (i.e. M/F and X or I) genders may apply. ● Review internal policies for inadvertent gender references limited to male or female and include gender identity training; ● Consider a gender neutral restroom/toilet.
<p>Right to Temporary Reduction in Working Hours</p> <p>Draft legislation, now before parliament, grants employees the right to demand a temporary reduction in their working hours (“bridging part-time employment). If passed it is due to come into effect in January 2019.</p>	<p>If passed, every employee in a company with more than 45 employees who has been employed for at least 6 months will have the right to demand a temporary hours reduction for between 1 and 5 years, unless the CBA says otherwise. There will be an application process to follow.</p> <p>Employers will be able to refuse if they can demonstrate an adverse impact on the business – the onus of proof will be on the employer. For businesses with more than 200 employees, the employer can refuse if the number of employees on bridging part-time employment exceeds a threshold, yet to be determined.</p>	<p>None at this stage but track the progress and detail of the legislation.</p>

This is a high level general update only. Legal advice should be obtained on specific circumstances.