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2018 Threshold Values in Labour Law

Employment Law – good to know...

Many rights and duties of an employer are directly linked to the number of employees. The protection against unfair dismissal and the size and composition of the employee representative bodies and of the supervisory board, for example, depend on whether certain numbers of employees – so-called threshold values – are exceeded. Threshold values also influence many other topics, however, such as the duty to set up a social compensation plan, the duty to issue a notification of mass dismissals or to employ severely disabled persons.

Just like last year, we have compiled the most important updated labour law threshold values in the attached overview.

New threshold values have been added owing to the German Transparency of Remuneration Act (*Entgelttransparenzgesetz*). As of 6 January 2018, employers in establishments with more than 200 regular employees must provide employees with information regarding, amongst other things, the median of the gross monthly remuneration and up to two further pay components if at least six employees of the opposite sex perform the same or equivalent work. For more information on the entitlement to information pursuant to the German Transparency of Remuneration Act please visit: [Link to the Newsletter](#).

The overview lists the threshold values mentioned in the relevant statute. When using the overview, you must take into account, however, that the threshold values are not always calculated in the same way. Some examples:

- Some regulations take the number of employees in the affected establishment as a basis, others the number of employees in the company. We have marked this with symbols in our overview.
- In some cases, the rules are based on the "employees regularly employed", but sometimes also on the annual average numbers or the number of employees on specific reference dates. In addition, part-time employees are counted differently (headcount or *pro rata*).
- The question as to what groups of employees (e.g., apprentices or temporary employees) are to be included in the calculation of the threshold values is approached in different ways by the regulations.
- At present, only those employees who are employed in establishments in Germany must be taken into account when calculating the threshold values. Case law is in a state of flux in this regard, however; changes cannot be excluded.

Against this background, the overview serves as a first source to gain information. An exact determination of the threshold values in the individual case, however, requires a detailed review as to what calculation principles apply to the individual rule.

Kind regards

CMS Germany
Employment & Pensions Practice Group

A. Number of Works Council Members (§9 German Works Constitution Act (*BetrVG*))

Number of employees	Works council members
5 to 20 employees eligible to vote	1 WCM
21 to 50 employees eligible to vote	3 WCM
51 to 100 employees eligible to vote	5 WCM
101 to 200 employees	7 WCM
201 to 400 employees	9 WCM
401 to 700 employees	11 WCM
701 to 1,000 employees	13 WCM
1,001 to 1,500 employees	15 WCM
1,501 to 2,000 employees	17 WCM
2,001 to 2,500 employees	19 WCM
2,501 to 3,000 employees	21 WCM
3,001 to 3,500 employees	23 WCM
3,501 to 4,000 employees	25 WCM
4,001 to 4,500 employees	27 WCM
4,501 to 5,000 employees	29 WCM
5,001 to 6,000 employees	31 WCM
6,001 to 7,000 employees	33 WCM
7,001 to 9,000 employees	35 WCM

In establishments with more than 9,000 employees, the number of work council members will increase by two members for every additional fraction of 3,000 employees.

B. Number of Members Released From Their Work Duties (§ 38 German Works Constitution Act)

Number of employees	Works council members
200 to 500 employees	1 WCM
501 to 900 employees	2 WCM
901 to 1,500 employees	3 WCM
1,501 to 2,000 employees	4 WCM
2,001 to 3,000 employees	5 WCM
3,001 to 4,000 employees	6 WCM
4,001 to 5,000 employees	7 WCM
5,001 to 6,000 employees	8 WCM
6,001 to 7,000 employees	9 WCM
7,001 to 8,000 employees	10 WCM
8,001 to 9,000 employees	11 WCM
9,001 to 10,000 employees	12 WCM

In establishments with more than 10,000 employees, one further works council member must be released for each additional fraction of 2,000 employees.

C. Income thresholds for the Assessment of Social Security Contributions (per month)

	West	East
Income Threshold for the Assessment of Contributions		
General statutory pension insurance	EUR 6,500	EUR 5,800
Health insurance and long-term care insurance	EUR 4,425	EUR 4,425
Unemployment insurance	EUR 6,500	EUR 5,800
Reference figure regarding social security	EUR 3,045	EUR 2,695

D. Other Threshold Values

Number of employees	Relating to ○ company ◆ establishment	Essential rules	Legal provision
5	◆	Election of works council possible	§ 1 I German Works Constitution Act (<i>BetrVG</i>)
> 5	◆	German Act on Protection Against Unfair Dismissal (<i>KSchG</i>) applies to employment relationships that have commenced before 31 December 2003, if applicable	§§ 1 to 14, § 23 I German Act on Protection Against Unfair Dismissal
> 10	◆	German Act on Protection Against Unfair Dismissal applies	§§ 1 to 14, § 23 I German Act on Protection Against Unfair Dismissal
	◆	Set up break room/break area, if applicable	4.2 of Appendix in conjunction with § 3 I German Workplace Ordinance (<i>ArbStättV</i>)
> 15	○	Entitlement to reduction of working hours	§ 8 German Part-Time and Fixed-Term Employment Act (<i>TzBfG</i>)
	○	Entitlement to reduction of working hours during parental leave	§ 15 V, VII 1 No 1 Federal Family Allowance and Parental Leave Act (<i>BEEG</i>)
	○	Entitlement to long-term nursing care leave	§ 3 I German Nursing Care Leave Act (<i>PflegeZG</i>)
20	○	Employer's duty to employ a disabled person, compensation levy, if applicable	§§ 154 I, 160 Book IX German Social Security Code (<i>SGB IX</i>)
> 20	○	Codetermination of works council regarding individual personnel matters	§ 99 I German Works Constitution Act
	○	Duties to inform and consult with works council in the event of substantial alterations to the establishment	§ 111 German Works Constitution Act
	○	Reconciliation of interests and duty to provide a social compensation plan	§ 112 German Works Constitution Act
	◆	Duty to notify the Agency for Employment in the event of dismissal of more than 5 employees within 30 calendar days	§ 17 I 1 No 1 German Act on Protection Against Unfair Dismissal
	○	Appointment of at least one security officer, requirements depend on trade association	§ 22 I Book VII German Social Security Code
21	◆	Works council: 3 members	§ 9 German Works Constitution Act
> 25	○	Entitlement to family nursing care leave	§ 2 I German Family Nursing Care Leave Act (<i>FPfZG</i>)

Number of employees	Relating to		Essential rules	Legal provision
	o company	◆ establishment		
40	o		Employer's duty to employ 2 disabled persons, compensation levy, if applicable	§§ 154 I, 160 Book IX German Social Security Code
51	◆		Works council: 5 members	§ 9 German Works Constitution Act
60	◆		Duty to issue a notification of mass dismissals: 10 % or more than 25 employees within 30 calendar days	§ 17 I 1 No 2 German Act on Protection Against Unfair Dismissal
	o		Employer's duty to employ 3 disabled persons, compensation levy, if applicable	§§ 154 I, 160 Book IX German Social Security Code
> 100	◆		Possibility for the works council to form committees and assign tasks to them	§ 28 I German Works Constitution Act
	o		Duty to form an economic committee	§ 106 I 1 German Works Constitution Act
101	◆		Works council: 7 members	§ 9 German Works Constitution Act
	◆		No option to agree on simplified electoral procedure for small establishments	§ 14 a V German Works Constitution Act
200	◆		1 WCM released from work duties	§ 38 I 1 German Works Constitution Act
> 200	◆		Individual entitlement to information regarding comparable pay and pay determination	§§ 10, 12 I German Transparency of Remuneration Act
201	◆		Works council: 9 members	§ 9 German Works Constitution Act
401	◆		Works council: 11 members	§ 9 German Works Constitution Act
500	◆		Duty to notify the Agency for Employment in the event of mass dismissals of at least 30 employees within 30 calendar days	§ 17 I 1 No 3 German Act on Protection Against Unfair Dismissal
> 500	o		Co-determined supervisory board (One-Third Participation)	§ 1 I German One-Third Participation Act (<i>DrittelbG</i>)
	◆		Works council may demand selection guidelines	§ 95 II 1 German Works Constitution Act
	o		Request for company review procedure regarding compliance with the principles of equal remuneration	§§ 17 to 20 German Transparency of Remuneration Act
	o		Report on equal treatment and equal pay	§§ 21, 22 German Transparency of Remuneration Act

501	◆	Two works council members released from work duties	§ 38 I 1 German Works Constitution Act
701	◆	Works council: 13 members	§ 9 German Works Constitution Act
901	◆	3 works council members released from work duties	§ 38 I 1 German Works Constitution Act
1,001	◆	Works council: 15 members	§ 9 German Works Constitution Act
1,501	◆	Works council: 17 members, 4 released from work duties	§§ 9, 38 I 1 German Works Constitution Act
> 2,000	○	Co-determined supervisory board	§ 1 I German Codetermination Act (<i>MitbestG</i>)

Notes: The exact calculation of the threshold values may differ, for example, in view of the consideration of apprentices and/or temporary employees, the definition of the term "establishment" and the significance of part-time employees or external managing directors. Threshold values regarding specific employee groups, such as disabled people, adolescents, executive employees or officeholders, are (at least in part) not listed. Provisions that exclusively apply to maritime business or the public sector are not listed either. The overview is not exhaustive; the threshold values set out in the German Data Protection Act (*BDSG*), German Maternity Protection Act (*MuSchG*), Book III German Social Security Code (*SGB III*), Book V German Social Security Code (*SGB V*), Book VII German Social Security Code (*SGB VII*), German Act on Occupational Physicians, Safety Engineers and Other Occupational Safety Specialists (*ASiG*), §§ 28 a, 92 a II, 110, 112 a German Works Constitution Act (*BetrVG*), for example, are not included.



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