

Understanding Germany's Employment Laws & Regulations

Presenter: Sven Haase

Organiser: BIPO | Make Life Easier.

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Housekeeping Notes

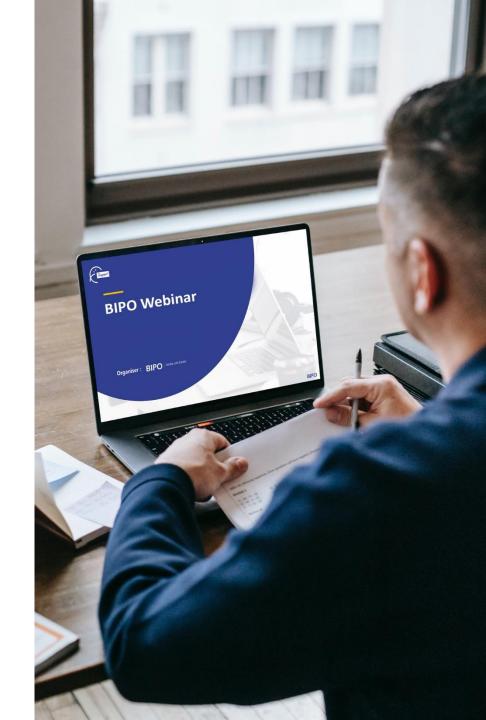
03

O1 Presentation slides will be shared.

Q&A session is at the end.

Use the **CHAT** function to ask us your questions.

Give us your feedback through the form!



Speaker



Laurent-Pierre Sans
Regional Director, Europe

- Graduated in IT, HR, Sales and Marketing
- 25 years of experience in the HR industry
- Has multiple leadership roles in Implementation, Service Delivery, Sales, Strategic Partnerships and Customer Success
- Has extensive expertise in helping international companies structure and transform their HR organization across all industries



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200

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Payroll & People Solutions to Manage your Global Workforce





Speaker



Sven HaaseService Delivery Manager

Married
One child
46 years old

- Studied Economics and German Tax and Social Security law
- 20 years payroll experience in Germany (DATEV), Switzerland (Coca Cola) and Spain (ASC)
- Project Manager Payroll Software implementation
- Worked for DATEV eG (biggest Payroll Software Provider in Germany)
- Payroll Outsourcing General Motors (ACS)
- Experienced in several industries, e.g. Solar, Publishing, Beverage, Public Sector, IT



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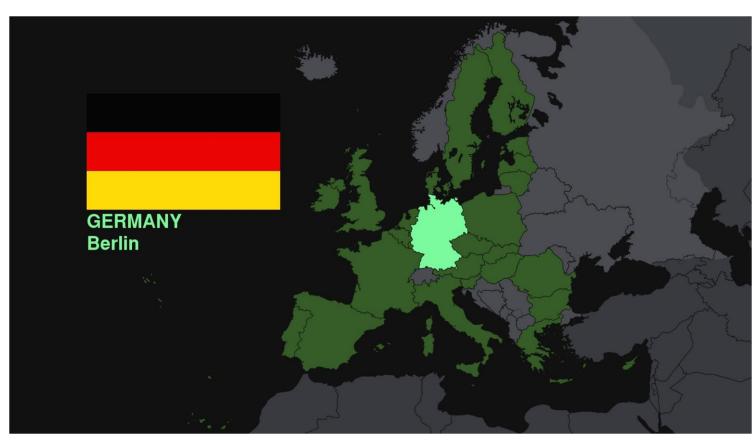
- **01.** Brief Introduction about Germany
- **02.** Employment Laws & Regulations
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- **05.** Termination of Employment Contract
- **06.** Salary Payment / Reasonable Wage
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Introduction to Germany

About Germany

Population 83 Million Biggest economy
In Europe

4th biggest economy In the world







Germany Facts











- In Germany we have 1,500 different types of beer, 300 types of bread and 1,000 types of sausage
- In the state of Bavaria, beer is actually considered a food!
- The German language shares 60% of it's vocabulary with English
- You can find over 2100 castles throughout the country
- Our capital city, Berlin is 9 times bigger than Paris and has more bridges than Venice
- 65% of the highways in Germany have no speed limit and are called the Autobahn
- The first book ever printed was in German, and the first magazine was launched in Germany
- Some of the world's most famous inventions were created in Germany automated calculators, automobiles, insulin, petrol engines, jet engines, Walkman, the mp3-player...
- "Donaudampfschifffahrtselektrizitätenhauptbetriebswerkbauunterbeamtengesellschaft" is the longest word to be published it's 79 letters long!
- The tradition of having a Christmas tree was started in Germany
- Escaping prison in Germany isn't illegal because it's a basic human instinct to want to be free



Employment Laws & Regulations

Introduction

German employment law puts a strong emphasis on protecting employees and is divided into two areas:

- 1. Individual Employment Law concerns relations between the individual employee and the employer. Important pieces of legislation are:
 - Individual employment contracts ("Arbeitsvertrag")
 - German Civil Code ("Buergerliches Gesetzbuch" or "BGB") → basic regulations for employment contracts
 - Part-time and Fixed-term Work Act ("Teilzeit- und Befristungsgesetz") → prevents discrimination in the treatment of part-time or fixed-term employees in comparison to full-time employees
 - Employee Leasing Act ("Arbeitnehmerueberlassungsgesetz") → company or individual that leases out German employees as contractors must hold an <u>Arbeitnehmerüberlassung (AUG) license</u>
 - Federal Holidays Act ("Bundesurlaubsgesetz") → governs minimum vacation days 20/24 days per year
 - Maternity Protection Act ("Mutterschutz") → protects the health of women and their children at the place
 of work, training and study during pregnancy, after childbirth and during breastfeeding



2. Collective Employment Law regulates the collective representation and organisation of employees as well as the rights and obligations of employees' representatives.

Important pieces are:

- Business Constitution Act ("Betriebsverfassungsgesetz") It grants employees a right of participation and codetermination in social, personnel and economic matters
- Codetermination Act ("Mitbestimmungsgesetz") allows workers to elect representatives (usually trade union representatives) for almost half of the supervisory board of directors
- German Trade Union Confederation (DGB) is an umbrella organisation representing around six million members from eight trade unions
- Collective agreement Act ("Tarifvertragsgesetz") governs the rights and obligations of the parties to the
 collective agreement and contains legal rules which may regulate the content, the entering into and
 termination of employment relationships as well as establishment-level issues and staff and works council
 matters

For international companies looking to do business in Germany, a global PEO can help support you to navigate German labour and employment laws, so you can set up, hire or expand into Germany quickly and compliantly.

Germany - Data Protection Overview

Data protection in Germany is primarily governed by the **GDPR** (General Data Protection Regulation of the EU). In Germany, private bodies that permanently employ at least 20 persons dealing with the automated processing of personal data are required to appoint a **data protection officer** (DPO).

Some subjects could be:

- Records of processing activities
- Data processing for advertising purposes
- Data transfers to third countries
- Right of access
- Right to be forgotten
- Data protection in the employment context
- Video surveillance

Case law:

- A company must pay €5,000 to a former employee because the company's response was late and not comprehensive to a subject access request.
- The Regional Court of Munich granted a non-material damage in the amount of €2,500 to a data subject in the aftermath of a personal data breach.



Employment Contract

Employment Contract

When looking to hire employees in Germany, there are a few **key requirements** that employers should know to remain compliant with German labour and employment law.

1. Written Employment Contracts

It is **not mandatory** to have a **written** employment agreement in place in Germany in the initial stages of hiring a new employee. However, an employer must **provide a summary** of what the employment relationship entails within the **first month** of an employee commencing employment.

This should include details such as:

- Employer and employee personal details
- When the employment officially commenced
- The job description with responsibilities, place of work, and hours
- Salary or hourly rate
- Which leave entitlement and notice period is applicable
- Any reference to related collective agreements

To avoid future disputes, a version of the employment contract should be drafted in German. However, this is not required by law.

2. Fixed-term/Open-ended Contracts

- As a general rule, the employment contract is entered into for an unlimited period.
- A fixed-term contract is possible and ends automatically without written notice at the end of its term.
- A fixed-term employment relationship must be justified by objective grounds, some of which are set forth in statutory law (e.g. temporary increase in work volume, substitution of an employee during parental leave).
- If no objective grounds exist, the fixed-term employment is limited to a maximum duration of two years, provided that no previous employment contract with the same employer existed.
- If the parties continue the employment after the expiration of the fixed-term contract, the agreement is deemed to be concluded for an indefinite period.



3. Trial Period

- The employer and employee may agree upon a trial period, which is limited by law to a **maximum** duration of **six months**.
- The **notice period** within the trial period is **two weeks**, unless otherwise agreed.
- The Dismissal Protection Act does not apply during the first six months of employment, regardless of whether the parties agreed upon a trial period.

4. Notice Period

- The **length** of the notice period for the employer **depends** on the employee's **length of service**, ranging from 4 weeks for employees with less than 2 years' seniority, to 7 months for employees with more than 20 years' seniority.
 - Only applicable for employer!
- The **employee may** terminate the employment with a notice period of four weeks to the 15th or the end of a calendar month.
- Most employment contracts align the notice periods for employees with the extended periods, e.g. 6 weeks to the end of next quarter or 2 month.

5. Working Hour Limits

- Although the average full-time employee works anywhere from 35-40 hours a week, it is possible to work as much as 48 hours a week.
- The statutory maximum working time is 8 hours per day from Monday to Saturday. Working on Sundays and public holidays is generally forbidden unless explicitly permitted by statutory law.
- All employees working a 6–9-hour day is entitled to a **30-minute break** and must have at least 11 hours between shifts.

6. Social Media and Data Privacy

- The **employer is entitled** to decide whether or not and to which extent the employees may use the company Internet, telephone or e-mail system for private matters, within or outside of the working hours.
- If the **employee violates the prohibition** of private use of work equipment, the employer is entitled to issue a warning and even to terminate the employment contract.
- We strongly recommend prohibiting the private use of the employee's company e-mail address, as
 otherwise monitoring or accessing the employee's company e-mail account may be very difficult or may be a
 criminal offence.



Leave Types

1. Annual Leave

- Employees are entitled by law to a minimum of 24 days off for a 6-day work week and 20 days for a 5-day one (2 accruing days / month, 1,67 accruing days / month)
- The average in Germany should be 30 days / year

2. Sick Leave

- Granting on hire date: 0 paid days for the first 4 weeks of employment from the 5th week of employment Employer must cover 6 weeks (42 days) per case
- Validity period: n/a

3. Maternity Leave

- 14 paid weeks (6 weeks before and 8 weeks after childbirth)
- 18 paid weeks if you have a premature, cesarean, or multiple births, or if your child is born with a disability (6 weeks before and 12 weeks after childbirth)

4. Paternity Leave

There's no statutory paternity leave in Germany

5. Parental Leave

- Parental leave can be up to three years, and the time can be split between the two parents
- Parents can apply for <u>parental allowance</u>. This state-funded program pays up to 1.800 euros a month



6. Carer's Leave

- Employees can take unpaid time off from work to care for their loved ones. The options are short- or long-term care leave
- Short-term: Up to 10 days of unpaid leave. No social insurance contributions occur during this period, but the employee's insurance cover is maintained
- Long-term: Up to 6 months of complete or partial leave. The employer must be informed at least 10 working days in advance. In companies with fewer than 15 employees, the employer has the right to reject the leave

7. Force Majeure Leave

• Employees can take 3-5 days to deal with urgent family matters within a year while receiving their regular pay, but specifics should be written in the employment contract

8. Bereavement Leave

• Two days is usually given for mourning and funeral for a close relative, but specifics should be written in the employment contract

9. Work-related Injury

 Work injuries are covered by statutory accident insurance as part of the national social security and contributions are made according to income and risk assessment. The leave is compensated for the first six weeks of the injury

05

Termination of Employment Contract

1. Grounds for Termination

- Under German law, the employment relationship can be terminated by **mutual consent**, **by expiry** of a fixed-term contract **or by notice** given by one of the two parties.
- **Special protection** is provided to employees who generally face a greater risk of dismissal such as **handicapped or pregnant employees** and members of the works council.
- In such cases, the permission of relevant government authorities is required prior to issuing a termination.

2. Regular termination must meet the following requirements

- It must be communicated in writing.
- The period of cancellation (or "Kündigungsfrist", which is usually mentioned in your contract) must be
 observed. If you cannot find it specified in your contract, the statutory period of cancellation designated
 in §622 BGB applies to you. The statutory deadline depends on the duration of your employment. The
 longer you have been in your company, the longer your notice period.
- If there is a works council, they must be notified before the dismissal.

3. Separation Agreements

- Due to the high standards of protection against dismissal, it is not uncommon for the employment to be terminated by contract between the employer and employee, i.e. a separation agreement. This may occur at any time with or without severance payment.
- Severance payments are paid e.g. the parties agree upon a severance payment (in or out of court) to settle a
 termination dispute, the court dissolves the employment against payment of severance if it finds that
 despite the invalidity of the termination, continued employment would be intolerable either for the
 employer or the employee.

4. Whistle-blower Laws

- There is **no general legislation** covering whistleblowing in Germany.
- In general, employees are obliged to report any kind of misconduct within the company.
- In certain business sectors, special legal provisions exist, such as e.g. in the financial services sector.
- Whistle-blowers do not enjoy any special protection against dismissals, but are subject to the general rules.
 Such cases shall be decided on the basis of the question of whether the whistleblowing was "proportionate" (i.e. that the employee should first report misconduct internally before going public or involving the authorities.

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6. Works Council

- A works council <u>can</u> be elected in Germany in operations normally <u>having at least five employees</u>.
- Whether a works council should be elected in an operation is decided exclusively by the employees.
- The works council **represents the interests of employees vis-a-vis the employer**. For example, the works council is responsible for making sure:
 - laws and collective agreements are observed
 - nobody is discriminated against based on their gender, age, origin, etc. during hiring and promotion;
 - and employees' views regarding improving the workplace are implemented.
- The works councils operate on a voluntary basis, i.e. the **members are not paid extra** money for what they do.
- However, the tasks of the works council are done **during regular working hours**. So the employer must release the members of the works council for a certain number of hours.
- The employer alone bears the costs resulting from the work of the works council.
- Dismissal are just possible for an important reason and with the consent of the works council
 committee.



Salary Payment

Average Salary in Germany 2022

Hourly Wage =
$$\frac{Annual\ Salary}{52 \times 5 \times 8}$$



3,810 EUR

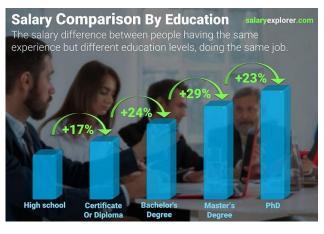
(45,700 EUR yearly)













History of Social Insurance

Once you receive your first payslip in Germany, you will notice a lot of deductions on it. Some of them are taxes; others are social security contributions. As a rule of thumb, you can estimate around 40% deductions from your gross salary.



In 1889, German Chancellor
Otto von Bismarck introduced
the world's first social
insurance programme, making
Germany the first nation to
adopt such legislation. The
programme later became a
model for many other
countries.

Germany enacted a compulsory sickness insurance law in 1883 followed by Austria in 1888; Hungary in 1891; Great Britain and Russia did the same in 1911 (Great Britain's workmen's compensation had come in 1880; the Netherlands enacted a compulsory sickness insurance law in 1913;

In 1889, Germany enacted compulsory <u>old-age</u> insurance - which included invalidity insurance. Here contributions were split between worker, employer and Government.



Payroll Deadline

Salary Payment & Deadlines

- The main purpose of **payroll** is to record an employee's salary entitlement in writing, which then provides proof of wages or salary and shows the employee the **individual components of** his or her **net wage/salary**.
- Employee must be paid at least once a month.
- Employer must provide a payslip.
- Employer is obliged by law to **report** the withdrawn **social contributions** until the **5th last bank day** (October 25th, 2022) of each month and **must pay** them until the **3rd last bank day** of the current month (October 27th, 2022).
- The withdrawn source tax must be reported and paid until the 10th of the following month (e.g. October 2022 latest the 10th of November 2022).



Payroll Benefits

What are benefits in kind (Sachbezüge) in payroll?

- A benefit in kind is a benefit to the employee that does not consist of the transfer of wages. However, it still
 offers the employee a "non-cash" advantage at better conditions than usual.
- Some important benefits in kind are:
 - €44 de minimis limit. Gifts up to a value of €44 per month remain tax-free for both parties (e.g. voucher).
 - Discount allowance up to €1,080 per year. Employees can claim free or discounted goods or services from their employer (e.g. staff purchases in retail).
 - Company events. An annual allowance of €110 per employee applies to attendance at relevant events (only applies if all employees can attend the event)
 - Childcare, Further education, Moving costs, Reimbursement of travel expenses, Low-interest loans from employers



Payroll Calculation

Payroll Calculation Methods

- Payroll calculations can be done **per calendar days or flat with 30 days**, it does not matter how many days the specific months has exactly.
- For example, an employee starts on the 10th of October 2022 and his salary would be EUR 5,000.

```
5,000 / 30 days = EUR 166.67 per day * 22 days (10.10.-31.10.) = 3,666.74 EUR
5,000 / 31 days = EUR 161.29 per day * 22 days (10.10.-31.10.) = 3,548.38 EUR
```

- Both variants are correct but have a different result.
- The health insurances always calculate with 30 days, does not matter which month it is.
- It can be that a labour agreement in a specific industry rules which option has to be used.



Germany Statutory Employer's Responsibilities 2022

Social Security Contributions

Social Insurance Components ¹ (in % of gross wage)	Employer/Employee Share (in % of gross wage)
19.60/ paneion incurance	9.3% employer
18.6% pension insurance	9.3% employee
14.6% health insurance ²	7.3% employer²
14.0% Health insulance	7.3% employee²
2.4% unemployment insurance	1.2% employer
2.4% difemployment insurance	1.2% employee
3.05% nursing care insurance	1.525% employer
5.65% Harsing care insurance	1.525% employee ³
1.14% accident insurance	1.14% employer ⁴

¹ Plus minor allocations

Source Tax

① 2022 German Income Tax Classes (Steuerklasse)			
Tax Class	Description		
1	Those single or separated, but not falling into either category II or III.		
П	Single and separated, with a child, entitling them to a child's allowance.		
III	"Married", or "widowed employees who are within the first year of a spouse's death"		
IV	Married employees both of whom receive income		
V	Married persons who would normally fall into category IV, but whose spouse is in tax class III.		
VI	Employees who receive income from other employment on other, or several different tax cards (Lohnsteuerkarte).		

Most non-residents fall into either Tax Class I or III (one or three).

If both partners are working then tax class IV will apply.

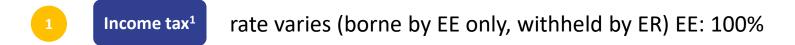
https://www.bbx.de/grossnet-wage-calculator-germany



² Plus additional contribution

³ Childless employees aged above 23 years pay an extra 0.25% nursing care insurance

⁴ Specific regulations apply in the federal state of Saxony



church tax applicable only if EE is a church member, rate varies by state, 8 – 9% of income tax EE: 100%

reunification tax, full rate 5,5% of income tax, no deduction for incomes of up to about €73.000 full rate only if income exceeds about 109.000 € (if taxed as single person) EE: 100%



- ER: 100% rate varies by health insurance 1,0 4,1% -> reimbursement for costs of EE
- ER: 100 % rate varies by health insurance company, 0,19 0,89% -> continued payment of income in case of maternity
- insolvency ER: 100% rate 0,09% -> in case of ER bankruptcy insurance takes over salary for max 3 months

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ER: 100% paid yearly, rate varies by industry and individual employees risk

Comments

1. Income tax is an employee-only contribution.

• In any German legal entity it is the employer's responsibility to withhold the tax from the employee's gross income and to pay it directly to the tax office for all the company's employees (1 - 3).

2. U1 – reimbursement of sickness expenses (sick leave pay)

- The reimbursement procedure **U1 applies only to employers who employ no more than 30 people** as a rule. Part time employees will be taken into account according to their regular weekly working hours on a factor of 25% per each 10 hours per week.
- The health insurance reimburses employers sick leave pay to the employee incl. total social insurance contributions.

3. U2 – reimbursement of maternity expenses (maternity leave pay)

- Reimburses employers regardless of the number of employees periods before and after childbirth (six weeks before and eight weeks after).
- The subsidy amounts to the employee's net payment during the protection period. The employment compensation paid to compensate for a reduction in earnings occurring due to the prohibition of employment. This subsidy amounts to the gross payment plus employer's social security contributions.



EOR (Employer Of Record) vs. AUG (Employee Lease)

When talking to clients who are either based in Germany or want to hire there, we often notice that many of them seem to confuse EOR (Employer of Record) with AUG (the German labour leasing license).

	EOR (Employer Of Record)	AUG (Arbeitnehmerüberlassungsgesetz)
	EOR is a service model for global hiring	AUG is the labour leasing license operated in Germany
	You can employ workers in other countries without opening your own entity in the country	AUG is the German labour leasing license which is needed for short-term labour leasing within Germany, i.e. German-based worker and German-based end client to whom the worker is leased
	An EOR is stated as the legal employer of your employees on paper	Fills short-term positions or to cover temporary employment needs
Definition		EOR mainly covers contractors. As freelancers on their own entities,
	The EOR partner takes on all the administrative charges of the employment such as drafting a compliant employment contract, registering the employee with social security and paying their salary	Labour leasing doesn't apply to them Labour leasing licensing is a common practice in Europe and there are only some countries that don't work with labour leasing licenses, for example the UK, the Netherlands and Scandinavia
	EOR partner takes on all the legal responsibilities while you remain in full control of your employee's day-to-day activities.	
Duration	No limitations	Maximum contract duration is 18 months



07

Employment & Immigration Regulations

Introduction

Germany has been deemed as the fifth most favourable country to move to. This favourability is due to its well-performing economy, education system, and employment opportunities.

To immigrate to Germany, you will need a valid reason.

Business Visa

- A Germany Business visa is a short-stay Schengen visa, which permits its holder to enter and remain in Germany up to 90 days within 6 months unless it is not specified differently in the visa sticker.
- It is issued to people who come to Germany to perform business making, attend meetings, sign contracts, etc.
- If you require a Business Visa, contact the German Embassy / Consulate near your hometown, or visa application centre if available.

Application from: https://videx.diplo.de/videx/desktop/index.html#start





Germany Working (Employment) Visa

 The Germany Employment Visa is an opportunity for qualified foreigners to settle in Germany and work in their fields. It gives its holder the chance to enter and work in Germany for up to two years, with the possibility of extending the visa and later applying for the an EU Blue Card.

EU Blue Card Germany

- The German EU Blue Card is a **German residence permit for work**, issued to non-EU nationals who have a university education and will work in skilled positions in Germany.
- The EU Blue Card in Germany is valid for up to four 4 years.
- If you have a **limited contract**, your work VISA is valid for the **duration of your work contract plus an additional 3** months. During this time you can find a new contract that meets the requirements.
- If your contract is indefinite or longer than four 4 years, you can renew the German EU Blue Card.
- Benefits for Family Members Once you have successfully obtained a German EU Blue Card, your family will also be eligible to live and work in Germany under a regular work VISA, but with fewer restrictions.

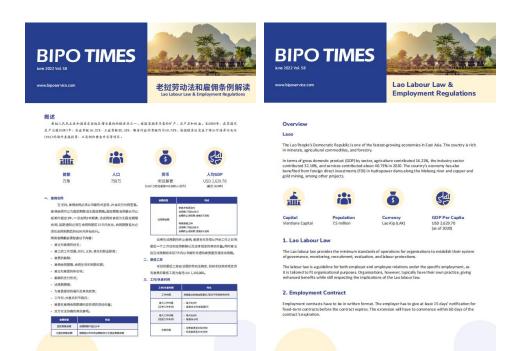
EU Blue Card Germany Application

You can apply for a German Blue Card if you meet the following criteria:

- University or Masters Degree Depending on the type of job, a minimum of a University degree is required.
- Work Experience You need at least 5 years of work experience.
- You must have a **concrete job offer** from a German employer and must submit a signed work contract, which states the position and the salary you are being offered.
- Your salary is in 2022 at least gross €56,400
- Some of the most demanded professionals are: Architects and interior designers, Engineers, IT specialists, Mathematicians, Health professionals, Scientists, etc.



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Labour Laws & Employment Regulations

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