Four Costly Mistakes International Companies Make: Your standard template will not work in Germany. Here's why — and what to do instead

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German Employment Contracts: Four Costly Mistakes International Companies Make
Your standard template will not work in Germany.
Here is why — and what to do instead.

By Anne Claire Schroeder-Rose

International companies hiring in Germany frequently rely on group-wide contract templates or agreements adapted from their home jurisdiction. It is an understandable approach — and a legally risky one. German employment law is shaped by a strict transparency principle: contractual clauses must be clear, specific, and comprehensible to the employee. Clauses that fail this test are regularly struck down by German labour courts, often with significant financial consequences for the employer.

The four areas below account for the majority of disputes we see from international clients operating in Germany.

1. Bonus Provisions
   "Discretionary" does not mean what you think it means
   Bonus clauses are the single most common source of litigation between international employers and their German employees. The problem typically arises from one of three patterns:

- A bonus labelled "discretionary" or "voluntary" is paid consistently for three or more years — under German case law, this can create an enforceable contractual entitlement, regardless of the disclaimer
- The contract describes concrete KPIs or target structures alongside a "voluntary" bonus — courts frequently find that the employee was entitled to rely on payment
- A cut-off clause withholds the bonus from employees who have left before the payment date — this is often invalid where the bonus compensates work already performed

Example: A French software company pays a German sales manager a performance bonus based on defined revenue targets for three consecutive years. Despite a "voluntary" disclaimer in the contract, a German court may find an enforceable entitlement.
International companies should also take care with target-setting mechanisms. Where no annual agreement on targets is reached, clauses granting the employer unilateral discretion to set targets are subject to strict scrutiny under recent Federal Labour Court case law. Courts examine whether targets were realistically achievable and whether the employer exercised its discretion fairly.

2. Overtime Clauses
   Blanket compensation clauses are routinely invalid
   The clause "all overtime is included in the salary" — standard in many English-language and international contract templates — is regularly held to be invalid under German law. The transparency requirement demands that employees can identify precisely which working time is covered by their remuneration.
   Example: A Swiss trading company uses an international template containing a standard overtime inclusion clause. The employee works ten to fifteen additional hours per week. In subsequent litigation, the clause is found invalid — and the company faces claims for all verifiable overtime worked.
   A permissible approach typically specifies a concrete number of hours: for example, up to ten additional hours per month covered by salary. Even then, proportionality requirements apply, particularly for part-time employees.

One genuine exception: employees with remuneration significantly above the German social security contribution ceiling — particularly those in senior positions who independently organise their working time — are less likely to succeed in overtime claims. But even here, the contract clause itself must remain transparent.

3. Post-Contractual Non-Compete Obligations
   Expensive, formalistic, and often misunderstood
   Germany imposes mandatory statutory requirements on post-contractual non-compete clauses that have no equivalent in most other jurisdictions. A non-compete obligation is only valid if it:

- is agreed in writing

- protects a legitimate business interest
- does not exceed two years in duration
- includes compensation (Karenzentschaedigung) of at least 50% of the employee's last contractual remuneration

Example: A UK software company includes a three-year non-compete clause with no compensation provision. Under German law, this clause is void — and unenforceable.
Two further issues catch international employers off guard:

First, compensation calculations must include all remuneration components — bonuses, commissions, stock options, virtual equity programmes, and benefits in kind. A 2025 Federal Labour Court decision confirmed that virtual stock options exercised during employment must be included. Many employers significantly underestimate the compensation figure as a result.

Second, unilaterally waiving a non-compete obligation after termination does not immediately release the employer from paying compensation. Under Section 75a of the German Commercial Code, the employer remains liable for up to twelve months following the waiver declaration.

4. Change of Residence to Germany
   When German law applies — even without a German contract
   An increasingly common scenario: an international employee who has been covering the German market from another European country relocates to Germany. The employer assumes the existing foreign contract simply continues. This assumption is frequently wrong.

Once the habitual place of work shifts to Germany, mandatory German employment law provisions apply — regardless of the governing law clause in the original contract. This includes dismissal protection, working time rules, minimum holiday entitlement, sick pay, transparency requirements, and non-compete regulation.
Example: A Polish software company employs a sales manager under a Polish contract for the German market. The employee relocates permanently to Munich. German mandatory employment law now applies to the employment relationship — partially or in full.
International companies should assess whether the existing contract requires adaptation, whether supplementary agreements are needed, and whether tax or social security implications arise from the change.

What This Means in Practice
German employment law is not hostile to international companies — but it is unforgiving of templates that were not designed for it. Clauses that are legally sound in Switzerland, the UK, France, the Netherlands, or the US may be invalid in Germany and may expose the employer to unexpected financial liability: overtime back payments, enforceable bonus claims, invalid non-compete agreements, and costly litigation before German labour courts.

Early review of employment contracts by a German employment law specialist is consistently the most cost-effective intervention.

How I Can Help

- Drafting and reviewing German employment contracts for international employers
- Bonus clause analysis and restructuring
- Overtime clause compliance review
- Non-compete and non-solicitation clause drafting and risk assessment
- Cross-border employment structuring — advising on which law applies and what needs to change
- Ongoing employment law support for international HR and legal teams operating in Germany

I am Anne Claire Schroeder-Rose, a German *Rechtsanwaeltin* and certified specialist in employment law (*Fachanwaeltin fuer Arbeitsrecht*), based in Ravensburg, Germany. I advise international employers and employees in English across all areas of German labour and employment law.

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