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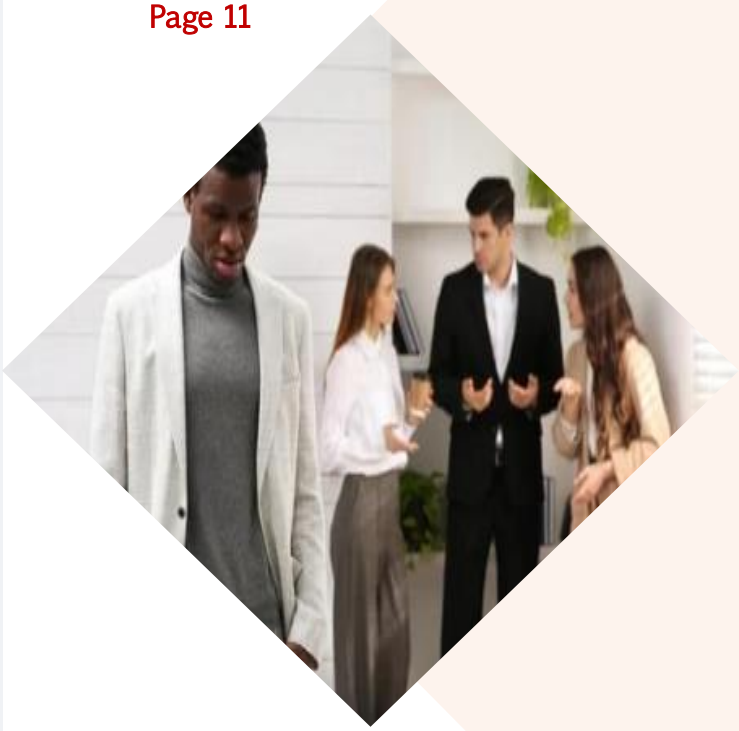
Dear readers!

Welcome to the latest edition of the labor law newsletter!

We are pleased to present you the 8th issue (June 2025) of our newly designed newsletter, packed with current topics from the world of labor law.
I am Olha Vitenko, your new editor. As a lawyer from Ukraine and a graduate of the LL.M. program at the University of Konstanz (2025), I bring in-depth expertise and new perspectives to this newsletter as **a research assistant at the Wirlitsch law firm for labor law**. It is a pleasure to accompany you from now on through the exciting world of labor law.
In this issue, we shed light on important topics such as the **General Equal Treatment Act (AGG)** and impending legal consequences. Another top topic is the **Coalition Agreement 2025**: What changes in labor law are in store for us and what do they mean in practice? Be informed in ahead of time to set the right course!
The **works meeting** also harbors surprises - we clarify when the employer has to stay out. And finally, we look at **contractual penalties in employment contracts**, an area in which employees need to be particularly careful. We explain which clauses are permissible.
We are convinced that these topics will be of great interest to you and wish you an informative read!

Yours Olha Vitenko

Topics



General Equal Treatment Act (AGG) (Part 3)

To round off our main topic, we will take a final dive into the special characteristics of the General Equal Treatment Act (AGG) and the corresponding constitutional anchoring. We look at the characteristics of language, ethnic origin as well as homeland and social origin, disability and age in order to fully grasp the scope of protection against discrimination.

Language (Art. 3 Abs. 3 GG)

The characteristic 'language' enshrined in the Basic Law (Art. 3 para. 3 GG) prohibits unequal treatment on the basis of a person's mother tongue. This criterion aims in particular to protect linguistic minorities and ensures that nobody is disadvantaged because of their primary language.

Ethnicity or country of origin (§1 AGG / Art. 3 Abs. 3 GG)

Article 3 para. 3 of the Basic Law protects against discrimination on the grounds of 'homeland' and 'origin'. While 'homeland' refers to the geographical area in which a person was born or primarily lives, 'origin' refers to social origin and roots.

In turn, § 1 of the AGG explicitly prohibits discrimination on the grounds of 'ethnic origin'. This term is not synonymous with nationality or citizenship. Rather, it refers to groups of people who differ from other parts of the population due to common characteristics such as customs, cultural traditions, common ancestry, external appearance (including skin color), language and/or religion. One example of this is the Sinti and Roma, who are recognized as a group with their own distinct social and family customs and traditions.

Disability (§1 AGG / Art. 3 Abs. 3 GG)

Both Art. 3 Para. 3 GG and §1 AGG prohibit discrimination on the grounds of 'disability'. A disability within the meaning of these laws is a non-temporary impairment of physical functions, mental abilities or mental health which, in interaction with attitudinal and environmental barriers, may prevent a person from participating in society on an equal basis with others. The cause of the disability and any fault are irrelevant.

The AGG's definition of disability is deliberately broad. It not only covers severely disabled people and their equals within the meaning of Social Code IX (SGB IX), but also includes vulnerable people with physical, mental or psychological impairments to whom SGB IX does not apply or only applies to a limited extent. This includes, for example, people with significant mobility impairments, visually

impaired people with low visual acuity, but also people with psychoses or learning disabilities. However, it is important to differentiate: Not every illness automatically constitutes a disability within the meaning of the AGG. An illness as the mere cause of a possible future disability is not equal to an existing disability.

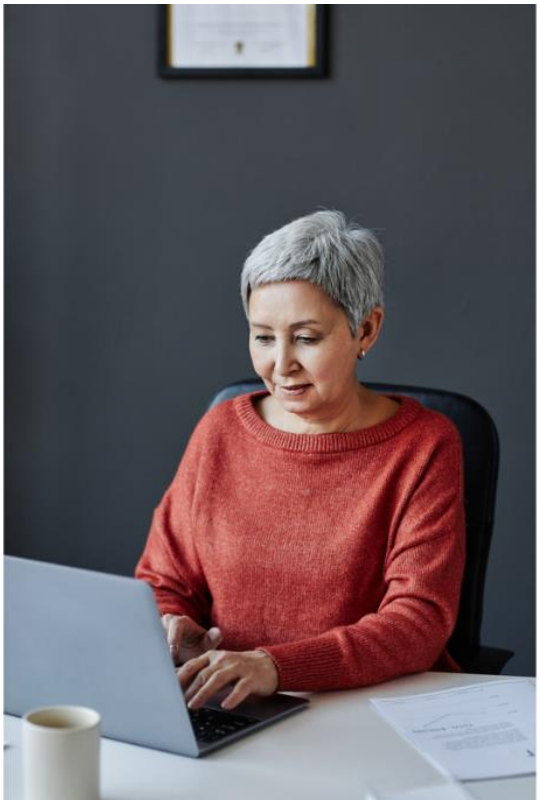
Age (§1 AGG)

§ 1 of the AGG provides comprehensive protection against discrimination on the basis of 'age'. While the previous understanding in works constitution and personnel representation law tended to emphasize the promotion of older people in the employment relationship, the idea of protection has been expanded. The protection against discrimination now extends to the fact that no-one - young or old - may be disadvantaged because of their age. This extended protection mandate is also relevant for works and staff councils (cf. the prohibition of discrimination in § 2 (4) of Federal Law on Staff Representation).

Different treatment on the basis of age (e.g. setting minimum or maximum age limits) is only justified under the narrowly defined conditions of § 10 AGG. The prohibition of age discrimination applies comprehensively, not only to recruitment, but also to all working conditions, such as the structure of fixed-term employment contracts, salary scales or the granting of additional leave.

Conclusion: A comprehensive protective framework against discrimination

The detailed consideration of the discriminatory characteristics of language, ethnic origin, disability and age in the third part of our series emphasizes the comprehensive protective intention of the General Equal Treatment Act. Together



with the characteristics already discussed, the AGG, often in close connection association with the constitutional requirements of Article 3 of the Basic Law, forms a robust foundation against various forms of discrimination.

The law aims to establish a culture of equal treatment, respect and equal opportunities not only in working life, but also in general civil law. Individual differences must not lead to unjustified disadvantages. Knowledge of these specific characteristics and the broad scope of application of the AGG is essential in order to recognize discrimination at an early stage, counteract it preventively and effectively help those affected to assert their rights. This in-depth insight closes the circle of our focus topic and emphasizes the central importance of the AGG for shaping a fair, inclusive and just society.

Coalition agreement 2025: Far-reaching changes to labor law planned - What employers and employees need to know now

The new coalition agreement for the legislative period from 2025 signals potentially significant changes to German labor law, particularly in the area of the Working Hours Act. While coalition agreements are not directly legally binding, they set the political framework for future legislative initiatives. It is therefore essential for employers and employees to familiarize themselves with the planned changes at an early stage. The focus of the labor law plans is on making maximum working hours more flexible, reorganizing the recording of working hours, tax incentives for overtime and measures to increase hours for part-time employees.

Below we highlight the key points announced and their potential impact on operational practice.

I. Flexibilization of maximum working hours: Farewell to the daily upper limit?

One of the most striking changes announced concerns the calculation of the maximum permitted working hours. § 3 of the German Working Hours Act (ArbZG) currently stipulates a maximum daily working time of eight hours, which can only be extended to up to ten hours in exceptional cases if the average working day of eight hours is not exceeded within a balancing period.

The coalition's plans: The coalition agreement stipulates that the rigid daily maximum working time is to be relaxed in favor of a **maximum working time of 48 hours**, which is primarily considered on a weekly basis. This could mean that employees would be allowed to work longer than ten hours on individual days as long as the average weekly working time does not exceed 48 hours in the equalization period (presumably still six calendar months or 24 weeks).

Possible effects and discussion:

- **For employers:** This change would enable much more flexible personnel planning to be able to react to fluctuations in orders or project requirements.
- **For employees**: On the one hand, this could lead to longer blocks of free time if working hours are spread over fewer days.

  On the other hand, trade unions and health and safety experts are already expressing concerns about a potential increase in stress and a more difficult work-life balance if the daily work phases are extended excessively.
- **Open questions**: The exact design details will be decisive, in particular how rest periods and employee health protection will continue to be guaranteed. Experience with similar models, for example in Austria, will certainly play a role in the political debate.

II. Mandatory working time recording: legal concretization according to European Court of Justice and Federal Labor Court case law

The obligation to record working hours has been an ongoing topic at least since the 'time clock ruling' of the European Court of Justice (ECJ) in May 2019 (Case C-55/18) and the subsequent clarification by the Federal Labor Court (BAG) in September 2022 (1 ABR 22/21). The BAG had already established a fundamental obligation for employers to set up a system to record all of their employees' working hours on the basis of the existing Occupational Health and Safety Act.

The coalition's plans: The coalition agreement now intends that this existing obligation to be **regulated clearly and in detail by law**. It can be assumed that employers will in future be explicitly obliged to systematically and completely document the start, end and duration of their employees' daily working hours. The recording is expected to take place **in electronic form**.

Possible effects and discussion:

- **Legal certainty and transparency:** A clear legal regulation creates more legal certainty for both sides with regard to compliance with maximum working hours, rest periods and the correct payment of overtime.
- **Conversion effort:** Especially for small and medium-sized enterprises (SMEs), the implementation of corresponding (possibly electronic) systems could be associated with some initial effort and costs.
- **Trust-based working time**: The coalition agreement indicates that trust-based working time models should continue to be possible under certain conditions. The challenge will be to find a balanced approach that harmonizes the flexibility of trust-based working hours with the unavoidable documentation obligations. Solutions are conceivable in which the obligation to keep records is delegated to the employees, but the responsibility for complying with the legal requirements remains with the employer.

III. Further planned measures in the context of labor law

In addition to the aforementioned focal points, the coalition agreement contains further plans relating to labor law:

- **Tax-free bonuses for overtime:** In order to incentivize overtime and increase the attractiveness of overtime, the coalition is planning to introduce or extend tax-free bonuses. Details on the amount and exact conditions have yet to be finalized.
- **Incentives for part-time employees to increase their working hours:** In view of the shortage of skilled labor, part-time employees

should be motivated to increase their weekly working hours. Further legislation will have to show which specific labor law instruments (e.g. easier return to full-time work, improved bridging part-time regulations) or financial incentives will be created for this.

IV. Outlook and recommended actions

The changes to working time legislation outlined in the Coalition Agreement 2025 are ambitious and have the potential to noticeably change the world of work in Germany. It remains to be seen what the actual draft legislation will look like and which details may still be adjusted in the parliamentary process.

We recommend employers:

- To follow the current discussions and legislative initiatives closely.
- Critically review your own working time recording practices now and adapt them, if necessary, in order to comply with the BAG requirements.
- Analyze internal processes in order to be prepared for a possible flexibilization of weekly working hours and assess the impact on personnel planning.

Employees should:

- Inform themselves about their rights regarding working hours, rest breaks and time recording.
- Keeping an eye on developments to understand how the planned changes could affect their individual work situation.

We will of course keep you up to date on further developments and specific draft legislation.

Works meeting: When the employer can't take part (and when can)

Works meetings are the central forum for direct dialogue between the works council and the workforce. This is where employees should be able to freely express their concerns and ask critical questions. However, the presence of the employer often leads to a noticeable "inhibition threshold" - the fear of possible disadvantages silences some employees. For the works council, which wants to represent the interests of the workforce in the best possible way, the question often arises: Can the employer be excluded from the works meeting or parts of it? The Works Constitution Act (Works Council Constitution Act) provides differentiated answers here.

I. Principle: Employer's right to participate in ordinary works meetings

Firstly, it should be noted that the works meeting is an event organized by the employees and their works council.

In accordance with **§ 42 (1) of the Works Council Constitution Act (BetrVG)**, the works council convenes and chairs the works meeting. The employer does not have the right to convene the meeting.

The following applies to the ordinary (regular) works meetings, which should take place once per calendar quarter (§ 43 (1) sent.1 BetrVG):

- **Obligation to invite and right to attend**: The employer must be invited to these meetings in accordance with § 43 Para. 2 Sentence 1 BetrVG, stating the agenda. The word 'is' emphasizes the obligatory nature.

- **Right to speak:** The employer has the right to speak at meetings (§ 43 (2) sentence 2 BetrVG). This right applies to all items on the agenda and enables the workforce to hear the views of the company management in addition to the works council's presentation.

  Employer's duty to report: At least once a calendar year, the employer must report at a works meeting on personnel and social matters, the economic situation and development of the company, as well as on environmental protection in the company (§ 43 para. 2 sent. 3 BetrVG).

The employer's right to participate and speak serves the exchange of information and the opportunity to comment, not a control function over the works meeting. However, there is no obligation for the employer to actually participate, with the exception of its annual reporting obligation. The exclusion of the employer from an entire ordinary works meeting is therefore **not permitted** in principle.

II. The limits of the right to participate: When is an exclusion of the employer possible?

Despite the fundamental right to participate, there are recognized exceptions and constellations in which the employer (or certain representatives) may not participate or its participation may be restricted:

1. **Specific legal exclusions:**

   - **Election of the election committee:** At works meetings at which the election committee for the works council election is elected (e.g. in accordance with § 17 (1) BetrVG), participation is limited to employees who are entitled to vote. The employer and also executive employees within the meaning of § 5 (3) BetrVG are typically excluded here, as they are not entitled to vote.

   - **Internal matters of the works council**: If only internal matters of the works council are dealt with at a works meeting (e.g. the discharge of the works council by the workforce - although this is not provided for by law, but can occur in practice), it could be argued that there is no direct connection to the rights and obligations of the employer under § 43 (2) BetrVG. However, this is

a legally controversial grey area.

2. **Extraordinary works meetings (§ 44 BetrVG): The strategic option**
   An important exception arises from § 44 (2) BetrVG for extraordinary works meetings. These can be convened:
   - at the request of the employer,
   - at the request of at least one quarter of the employees entitled to vote,
   - by the works council at its own discretion, if it deems necessary.

§ 44 para. 1 sentence 2 BetrVG is decisive here: If an extraordinary works meeting is convened at the request of the works council or a quarter of the employees entitled to vote and takes place **outside working hours, § 43 (2) sentences 1 and 2 BetrVG (employer's right to invite and speak) does not apply**. This means: Under these specific conditions, **the employer can be excluded from participation and the right to speak**.

Purpose: This regulation is intended to enable the works council and the workforce to discuss sensitive or critical topics internally and without the possible "inhibition threshold" caused by the presence of the employer.

During working hours: If such an extraordinary works meeting takes place during working hours, the employer's consent is required for an exclusion of the employer (implicated by § 44 (1) sentence 1 BetrVG, which links the continued payment of wages to the consent of the employer, unless the employer has requested this himself).

III. Information obligation despite exclusion?

Even if the employer can be excluded from an extraordinary works meeting (pursuant to § 44 Para. 1 Sentence 2 BetrVG), it is advisable for reasons of trustful cooperation (§ 2 Para. 1 BetrVG) to at least inform the employer of the time and the main items on the agenda. This applies in particular if the meeting takes place on company premises. In this way, the employer remains informed about the topics discussed, even without direct participation.

IV. Conclusion and practical tips

- Employees have a fundamental right to attend and speak at **ordinary works meetings** and must be invited. Exclusion is not possible.
- The possibility of excluding the employer exists primarily in the case of **extraordinary works meetings** that are convened on the initiative of the works council or a quarter of the workforce and take place outside working hours (or during working hours with the employer's consent to the exclusion).
- Specific occasions such as the election of the election committee also justify the exclusion of the employer.
- The works council should use the possibility of exclusion at extraordinary meetings strategically and

with a sense of proportion, especially if an open and unbiased discussion would otherwise be jeopardized. A good justification is always helpful here.

The correct handling of these regulations is crucial for a functioning company partnership and the effective defense of employee interests.

Contractual penalties in employment contracts: Caution required for employees

Contractual penalties in the employment relationship are often presented as an instrument that protects both contracting parties from breaches of duty. However, practice shows that they are predominantly designed to protect the employer at the expense of the employee. **Employees** are therefore generally **not required to agree to such a clause** and should examine it with particular caution.

What is a contractual penalty?

In German labor law, a contractual penalty is an amount of money specified in the employment contract. This is intended to ensure compliance with certain contractual obligations and serves as financial leverage. If a party breaches a clearly defined obligation, the agreed penalty payment becomes due without the damage incurred having to be proven in detail.

Typical cases of application - mostly in favor of the employer.

While employees can theoretically also demand contractual penalties (e.g. for non-payment of wages), in practice they are used almost exclusively by employers to protect their interests. Typical cases in which employers want to impose a contractual penalty are:

- **Failure to take up work**: When an employee signs the employment contract but does not take up the job.
- **Dismissal without notice by the employee without good cause:** To achieve a deterrent effect.
- **Breaches of a non-competition clause:** Especially after the end of the contract.
- **Unauthorized disclosure of trade and business secrets.**

Contractual penalties for minor breaches of duty such as occasional tardiness are unusual and often ineffective. In such cases, the employer has the right to issue instructions or other disciplinary measures such as a warning.

When is a contractual penalty effective?

In order for a contractual penalty clause to be legally effective, it must fulfil high requirements:

1. **Transparency and clarity:** The clause must be worded clearly and unambiguously. The employee must be able to recognize exactly which specific behavior is subject to the penalty..

2. **Appropriateness:** The amount of the penalty must be proportional to the severity of the breach of duty and the employee's salary. It must not 'unreasonably penalize' the employee. As a rule, the upper limit is one gross monthly salary.
3. **No overprotection:** The penalty must not serve to put the employer in a better position than it would be in if the contract had been fulfilled normally.

Courts apply a very strict standard when scrutinizing contractual penalties, as they severely disrupt the contractual balance.

Such a reason could exist if the employer carries out a training programme that goes beyond the usual training, for example:

- The financing of very expensive external training or certification.
- The payment of a high signing bonus, which is linked to a certain length of service in the company.

If there is no such clear, fair and comprehensible compensation, the employer is merely insuring itself against its general entrepreneurial risk at your expense.

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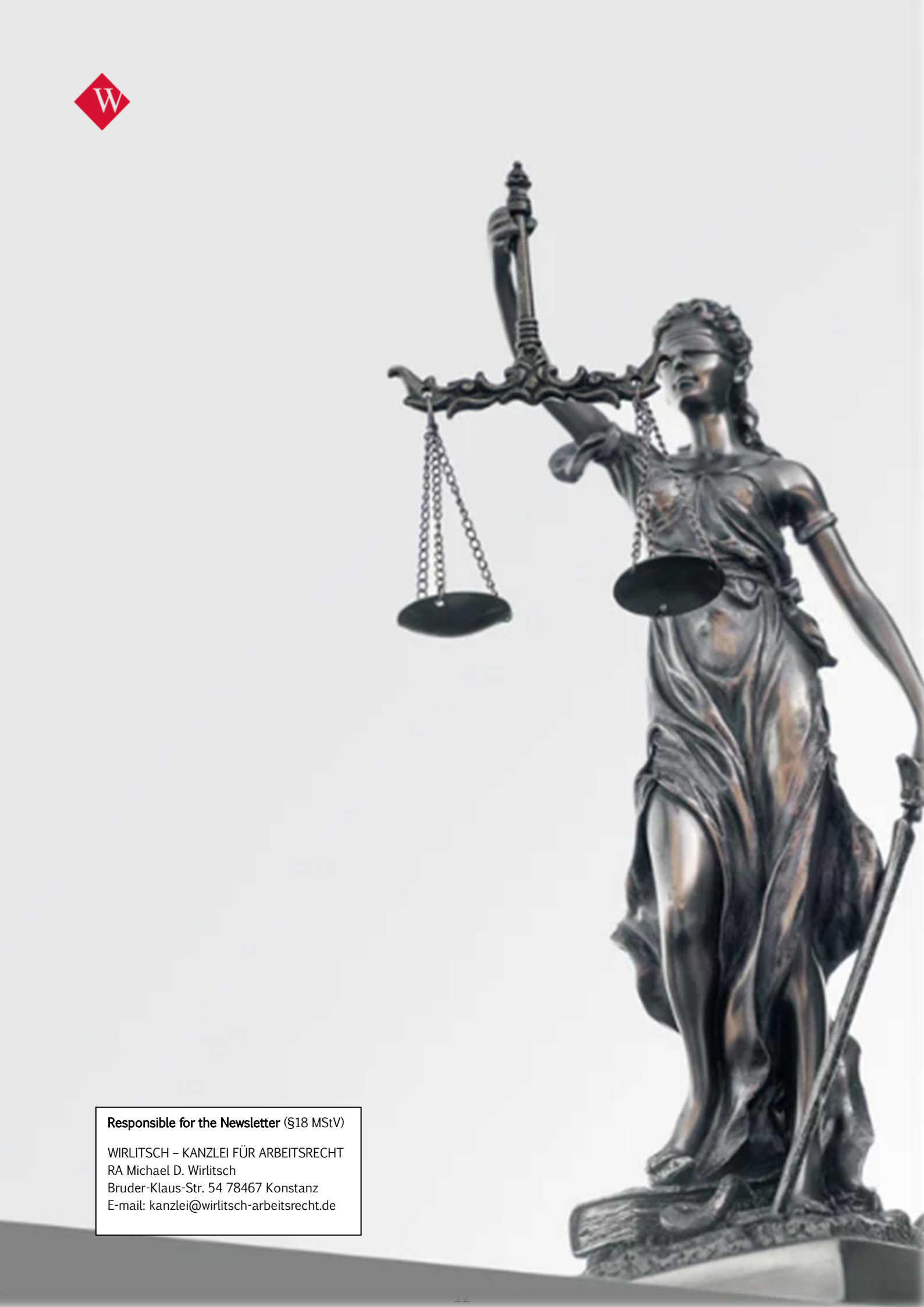
Recommendation: Why employees should rarely accept a contractual penalty: A contractual penalty is not a standard element of an employment contract. It unilaterally shifts the risk to the employee. Labor law is employee protection law and not employer protection law.

In principle, you should only agree to such a clause if there are special and favorable reasons for doing so.

Conclusion: Check and negotiate

As an employee, do not accept a contractual penalty clause lightly as a given. Ask for the reason and negotiate. The clause can often be cancelled without replacement. If in doubt, it is always advisable to have the employment contract checked by a labor law specialist before signing it. Without a clear and fair advantage that offsets the additional risk for you, there is rarely a good reason for employees to enter into such an agreement.



Responsible for the Newsletter (§18 MStV)

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