LEGAL BASE FOR PART-TIME AND TEMPORARY EMPLOYMENT OF LOCAL NATIONALS IN GERMANY

This information was extracted from the German Act on Part-Time and Temporary Employment and for the Change and Repeal of Labor Law Statutes, Part-Time and Temporary Employment Act (*Gesetz über Teilzeitarbeit und befristete Arbeitsverträge und zur Änderung und Aufhebung arbeitsrechtlicher Bestimmungen, Teilzeit und Befristungsgesetz* (*TzBfG*)).

CONTENTS

GUIDELINES

Concerning the German Act on Part-Time and Temporary Employment and for the Change and Repeal of Labor Law Statutes, Part-Time and Temporary Employment Act

1. General
According to section 1 of the *TzBfG*, the objective is to promote part-time employment, to stipulate the conditions for sufficiency of authorizing temporary employment contracts, and to avoid discrimination against employees in part-time or temporary employment.

1.1. Definition of Part-Time Employee

(1) A part-time employee is an employee whose regular weekly work time is shorter than the one of a comparable employee who is employed on a full-time basis. If there is no agreed on weekly work time, an employee whose average regular work time for a period of up to 1 calendar year is lower than the work time of a comparable full-time employee of the same organization is a part-time employee. “Organization” in this context is the agency identified for purposes of employee representation in the *Bundespersonalvertretungsgesetz* (*BPersVG*) (*modifizierte Fassung*) (German Personnel Representation Law) (the works council agency).

(2) A comparable employee is a full-time employee performing the same or comparable duties with identical grade allocations under the position classification criteria of the Collective Tariff Agreement II (CTA II). If there is no comparable employee in the organization, the comparable full-time employee will be governed by the applicable classification provisions and established regular work hours of the CTA II.

(3) An employee who is engaged in insignificant employment (so-called “€400 employment”) is also a part-time employee. As a rule, organizations of the United States Army, Europe (USAREUR), in Germany are not authorized to employ local nationals (LN personnel) under insignificant employment contracts.

1.2. Definition of Temporary Employee

(1) An employee with an employment contract that is concluded for a definite period of time (temporary employment contract). The definite period of time can be governed by the calendar (without material reason) or by the temporary nature (purpose) of the work (with material reason).

(2) The definitions of organization and comparable employee for part-time employees are equally applicable to temporary employees.

1.3. Prohibition on Discrimination

(1) Due to their part-time or temporary employment, employees may not be treated less advantageously than comparable full-time employees unless different treatment is justified by material reasons. For their temporary period of employment or for part-time employment, their remuneration or share of remuneration will be equivalent to the remuneration of comparable employees. This applies equally to all employee benefits provided for in the CTA II and pertinent USAREUR directives due to full-time employees.

(2) If specific employment conditions are contingent on the length of employment, the same time periods that are considered for non-temporary employees will be considered for temporary employees. This also holds true for the determination of the length of service under the provisions of section 1, Dismissal Protection Law[1] (6 months), as well as for the special protection from ordinary terminations provided for in section 8, paragraph 1, Protection Agreement[2] (15 years), as implemented in USAREUR Regulation 690-84, Reduction-in-Force—Local National Employees in Germany.

(3) Part-time employees will be entitled to the same length-of-service awards due to full-time employees.

(4) Employees claiming entitlements under the *TzBfG* will not suffer from any disadvantages because of doing so.

[1] Full name is *Kündigungsschutzgesetz* (Law on Protection from Termination of Employment).
[2] Full name is *Tarifvertrag vom 2. Juli 1997 über Rationalisierungs-, Kündigungs- und Einkommensschutz* (*SchutzTV*) (Tariff Agreement dated 2 July 1997 on Protection from Rationalization Measures, Termination of Employment, and Income Protection (Protection Agreement)).

2. Part-Time Work

2.1. Policy

(1) Without exception, LN employees who have been employed for more than 6 months will be entitled to work part-time if they so desire and if possible in the individual case after due consideration of all prevailing circumstances within the provisions set forth and the parameters established by the *TzBfG*. This also applies to the sharing of work time in individual positions by several employees.

(2) Full-time positions will be apportioned for part-time employment only within the weekly work hours currently authorized for the full-time position. In the case of positions with extended weekly work hours, part-time employment arrangements are possible to the extent that the authorized extended weekly work hours for the position in question are not exceeded.

Examples:

a. Even Distribution: Part-time employment in a regular 38.5-hour position for two employees with 19.25 hours each or for three employees with 12.84 hours each.

b. Uneven Distribution: Twenty or 25 hours for one employee and 18.5 or 13.5 hours for the other can be honored depending on a thorough assessment of mission and job requirements. (**NOTE:** No work time of less than 15 hours per week with reimbursement of less than €400 should be agreed on because it constitutes insignificant employment.)
NOTE: In line with the guidance under 1.1(3), insignificant employment of LNs is not authorized. Accordingly, when authorizing part-time employment, it must be guaranteed that depending on the individual employee's grade, hourly pay rate, or both, employment of less than 15 hours per week will not be insignificant employment at the end of the calendar year if work hours are reduced for tax and social insurance purposes. Therefore, part-time employment of 15 or fewer hours per week will be authorized only if there is assurance that the employment does not constitute insignificant employment on a calendar-year basis (the average monthly income must be more than €400, including potential one-time payments such as Christmas or vacation bonuses).

c. Extraordinary requests, such as reductions of the weekly work time by 5 or fewer hours, may be approved if it can be determined that there is no need to hire another part-time employee for the remaining work hours or the potential loss in productivity caused by the loss in work hours can be bridged by means other than hiring a part-time employee if this turns out to be impossible.

(3) Vacancy announcements for filling full-time LN positions will be announced as part-time positions if, for organizational reasons, they are suited for part-time positions within the meaning of paragraph 2.3(2). Vacancies will be announced as part-time positions externally and internally.
(4) Employees who have expressed an interest in part-time employment will be informed of existing and potential part-time employment opportunities in positions that meet their desires and for which they are qualified.

(5) Without prejudice to their information and cooperation rights according to sections 68 and 78(3) of the *BPersVG*, works councils will be regularly informed about part-time work. At least semiannually, works councils will be provided with a status report that shows at least the following:

a. The number of existing full- and part-time LN positions as well as planned part-time positions in their organization.

b. The number of conversions from full-time positions to part-time and vice versa.

2.2. Requesting a Reduction of the Work time

(1) If the employment has existed longer than 6 months, an employee desiring a reduction of the contractually agreed on work time may assert verbally or in writing his or her request at least 3 months before the commencement of the desired change of the work time. In doing so, the employee should specify or be requested to specify the desired distribution of the new work time over the individual workdays.

(2) Management officials will inform employees in writing that all requests for a reduction in work time will be asserted or submitted to the servicing civilian personnel advisory center (CPAC). Preferably, employee requests should be in writing. However, under any circumstances, the CPAC, will document the request in writing. As a minimum, the name, job title, series, and grade of the employee; the date of assertion of the request; the desired reduction of work time; as well as the distribution of reduced work time over the individual weekly workdays desired by the employee will be documented. Requests asserted or submitted to the employee's supervisor will be referred to the servicing CPAC without delay.

(3) If needed, the supervisor or the CPAC will obtain the required information by interviewing the employee accordingly; in particular, the employee should be requested to articulate the desired distribution of the new work time.

2.3. Reviewing, Discussing, and Deciding on Requests for Reduction of Work hours

(1) The CPAC will review the employee's request to determine whether or not the employee meets basic legal prerequisites (for example, the compliance with the minimum 6 months' employment period, the 3 months' filing period, and the 2-year bar of new request). If basic legal prerequisites are not met, the request can be rejected in writing on the basis of legal insufficiency, and the employee must be informed accordingly.

However, a request rejected for procedural defects can be resubmitted when the procedural obstacle no longer exists. Example: An employee who requested a reduction of work hours after 5 months of employment may resubmit his or her request after 6 months of employment have been completed. In this case, he or she is not barred from submitting the request for up to 2 years after the denial of the first request.

(2) If basic legal prerequisites are met, the CPAC , in coordination with management officials of the employing organization, will determine the feasibility of complying with the employee's desire under due consideration of the organization's mission and specific or unique job requirements as well as potential personnel implications. In doing so, the following legal requirements will be considered:

a. To the extent that there are no conflicting organizational reasons, the employer and the employee will reach an agreement on the employee's request for a reduction of the contractual work hours as well as on the desired distribution of the work hours.

b. The employee cannot unilaterally enforce the legal entitlement to part-time work if there are organizational reasons that are opposed to his or her desire. He or she can, however, file suit with the labor court (*Arbeitsgericht*) for substitution of the missing consent of the employer. The *Arbeitsgericht* will then review whether or not the employer's denial was justified.

c. The *TzBfG* lists some exemplary organizational reasons justifying a denial of the request for reduced work hours. In particular, such reasons exist if the reduction in work hours interferes with the organizational set-up, the flow of work, or the industrial safety in the organization, or if it would result in excessive costs to the employer.

d. Based on the lawmakers' reasoning for the legislative act, the employer will not be burdened with unreasonable demands in connection with the justification of denials or only partial approval of the employee's request. In this case, however, the reasons for denial of or only partial compliance with an employee's request must be logical and evident (for example, an impartial third party must be able to understand and reconstruct them).

e. For instance, the employer can use the argument of excessive costs if employees request a change in the distribution of their work time at worksites that have been technically laid at high expenses, and if the desired change would result in the requirement to set up new worksites that would remain unencumbered during other times. The following are some other examples of organizational reasons that may justify the denial of employees' requests for part-time work:

(aa) Employees request a reduction of the weekly work hours between 5 and 10 hours (1 to 2 hours per day). The work cannot be redistributed in the employing activity because other qualified employees are not available or because of their own high workload, and the labor office confirms in writing that a part-time employee for 1 to 2 hours per day is not available.

(bb) An employee's position requires special knowledge and skills that are not available in the current workforce or the labor market, and, therefore, extensive and lengthy efforts would be required to train a newly hired part-time employee. A written confirmation should be obtained from the labor office stating that an already qualified part-time employee is not available.

(cc) An employee's position requires frequent duty travel of longer duration or the frequent attendance in unscheduled meetings.

f. It is absolutely essential for the employer and the employee to agree to a distribution of the work time that is acceptable to both parties. In individual cases, the requirement to negotiate the new distribution of work hours is foreseeable. Therefore, as a matter of fact, the reasoning for the legislative act explicitly provides for "reaching agreements." From that, it follows that both parties are expected to arrive at compromise solutions.

(3) In case the employee's request is acceptable per se, the first-line supervisor will meet with the employee and discuss conflicts of interest with respect to the scope of the desired reduction of work hours and their distribution with the objective of reaching an agreement. If necessary, the supervisor of the first-line supervisor and a CPAC representative may attend the meeting. The employee may request the attendance of a works council member he or she trusts and, if the employee is a severely handicapped person, the attendance of the SHE representative at the discussion.

(4) In case of agreement, the resulting changes to the employee's employment contract will be documented in a new employment contract that will be signed by both parties. The employee's supervisor will ensure compliance with the pertinent provisions of Army in Europe Regulation 690-70.

(5) If no agreement has been reached about the reduction of the worktime and its distribution, the chief of the agency with delegated authority in personnel matters or his or her designated representative will inform the employee in writing of the denial of the request (sample letter below). The signed letter of decision will be handed to the employee in person or delivered in the same manner as a letter of termination of employment at the latest 1 month before the proposed commencement of the reduced work time. The CPAC will keep all documents on the organizational reasons for the denial on file with a copy of the letter of decision for a minimum of 2 years after the date of the respective employee's request.

(**NOTE:** In cases where the employee has not been promptly informed of the denial of his or her request, the work time will be reduced by operation of law as requested by the employee. If an agreement has been reached on the work time reduction but not on the distribution of the reduced work time, the request will be rejected in toto.)

(6) A new request for a further reduction or extension of the work time or a request for reconsideration of an earlier request that had been rejected can be filed after a period of 2 years following the approval or denial of the earlier request. If management interests significantly override the interests of the employee, the employer may change the agreed distribution of the work time by unilateral announcement. The change must be announced at least 1 month before its taking effect.

2.4. Works Council and SHE Representative Participation

(1) At the request of the employee, a works council representative may participate in the discussion of the request for a reduction in work time between the employer and the employee. With SHEs or employees of assimilated status, a SHE representative may participate in the discussion of the request for a reduction in work time between the employer and the employee. Works council and SHE representative consent to the reduction in work time are not required in the individual case.

(2) If a SHE or an employee of assimilated status requests a reduction in work hours based on the *TzBfG* or on article 81, paragraph 5, of the *Sozialgesetzbuch* (*SGB*) *IX* (German Social Security Code), part 2 (Severely Handicapped Law), SHE representatives will be involved based on article 95, paragraph 2, *SGB IX*, part 2 (Severely Handicapped Law).

(3) If several employees of the same employing organization collectively request the reduction of their work time requiring changes to the beginning and end of daily work hours, the works council will be involved under the codetermination procedure based on article 69 in connection with article 75, paragraph 3, number 1, *BPersVG*. If SHEs or employees of assimilated status are affected, SHE representatives will also be involved based on article 95, paragraph 2, *SGB IX*, part 2 (Severely Handicapped Law).

2.5. Position-Sharing

(1) The above policy and guidance apply equally to the sharing of the work time of individual positions by several employees (for example, more than two employees). They also apply to groups of employees who alternate with each other in specific positions during fixed time periods without sharing the work time in the position being an issue.

(2) For position-sharing, employees must agree to substitute for the other employees sharing the work time in the position if one of these employees is prevented from reporting to duty for whatever reasons. They must further agree to substitute if this is necessary for compelling organizational reasons provided the substitution can reasonably be expected in the individual case. These conditions will be documented in the respective employment contracts.

(3) The fact that an employee withdraws from position-sharing will not serve as a basis for the ordinary termination of the employment contract of another employee included in the sharing of the work time in the position. However, it may be used by management to change the employment conditions of the remaining part-time employees by notice of change of employment conditions (Änderungskündigung).

2.6. Part-Time Employment Pursuant to the *Bundeserziehungsgeldgesetz* (*BErzGG*)

(1) A legal entitlement to part-time employment during *Elternzeit* (parental leave) is also provided for in section 15, paragraphs 5 through 7, of the *Bundeserziehungsgeldgesetz* (*BErzGG*) (Federal Child Care Allowance Act). In deviation from the *TzBfG*, the employee must assert part-time employment at least 8 weeks before the commencement of the desired part-time employment, and the reduced work time must range within a timeframe of between 15 to 30 hours per week.

(2) During parental leave, it is possible to reduce the work time two times for a period of at least 3 months. Deviating from the *TzBfG*, the employer may deny the entitlement only on the basis of compelling operational reasons. Employee requests must be denied in writing within 4 weeks after the receipt of the request by stating the reasons for the denial.

(3) In deviation from the *TzBfG*, the employee's request is not approved automatically if the employer does not respond within 4 weeks. In order to assert his or her entitlement if the request is rejected, the employee must file suit with the *Arbeitsgericht*.

(4) Also in deviation from the *TzBfG*, after completing parental leave, the employee is principally obligated to return to his or her former work time. In this case, he or she is entitled to continued employment on the basis of the old contractually agreed on work time.

(5) However, under the provisions of the *TzBfG*, the employee is entitled to assert a reduction of the agreed on old work time for the time following completion of parental leave. Pursuant to section 8, paragraph 1, *TzBfG*, he or she may already do so during parental leave to ensure the uninterrupted transition to part-time employment under the *TzBfG*.

2.7. Part-Time Employment Pursuant to the *Sozialgesetzbuch* (*SGB*) *IX*

(1) Pursuant to section 81, paragraph 5, *SGB IX*, SHEs are entitled to part-time employment if—

a. The reduced work time is necessary due to the nature or gravity of the handicap,

b. The realization of the entitlement is not unreasonable for the employer according to section 81, paragraph 4, sentence 3, *SGB IX*, or does not result in unreasonably excessive expenditures,

c. There are no opposing work-safety regulations.

(2) The *SGB IX* does not include any provisions regulating the proceedings for asserting the entitlement or the extent of the reduction in work time.

(3) For the rest, the entitlement to part-time employment pursuant to section 81, paragraph 5, *SGB IX*, is not expected to be of much significance in practice because SHEs can also invoke the general entitlement to part-time work pursuant to section 8, *TzBfG*.

2.8. Additional Provisions of the *TzBfG* on Part-Time Employment

(1) On-call work is authorized within the scope of section 12 of the *TzBfG* with the proviso that the respective part-time employment contracts cannot be declared insignificant employment on a calendar-year basis. Guidance provided in paragraphs 1.1(3) and 2.1(2) will be observed.

(2) According to section 9, *TzBfG*, part-time employees, employees sharing work time in specific positions, employees alternating with each other in specific positions, and employees with on-call employment contracts desiring extensions of their agreed on work time will be accorded priority consideration for appointment to corresponding position vacancies for which they are qualified provided there are no compelling organizational reasons or desires of other comparable employees. In the latter case, the work hours of the employee with the highest social rights will be extended.

(3) Without exception, the employees listed in (2) above will be authorized to participate in measures of training and advanced training as outlined in section 10 of the *TzBfG* under the conditions stated therein.

3. Temporary Employment Contracts

3.1. Policy

(1) Temporary employment contracts are authorized only if such contracts are justified by a material reason as outlined in subparagraph a below or, in the absence of a material reason, under the conditions outlined in subparagraph b below.

a. Temporary employment based on a material reason.

(aa) Generally, the conclusion of temporary employment contracts is admissible if this is justified by a material reason. Representative examples of material reasons are outlined in section 14, paragraph 1, numbers 1 through 8, *TzBfG*. These are specifically to meet special or intermittent workloads, to temporarily replace an absent employee, or in connection with an appointment subsequent to vocational training to facilitate the employee's transition to follow-up employment. Another specific material reason is provided for in section 21 of the *BErzGG*. This legal provision authorizes the temporary replacement of female employees for the periods of time they are prohibited to perform certain work under the *Mutterschutzgesetz* (Mother Protection Act) and the temporary replacement of an employee during *Elternzeit*.

(bb) There is no prescribed minimum or maximum period of time for a temporary employment contract based on a material reason. However, the end of such employment must be specified by a date or the occurrence of an event. For example: from 1 August 2005 through the date of completion of the vehicle maintenance overhaul project XXY, or from 15 July 2005 until the return of Mr. Young from parental leave, or from 1 December 2005 until the return of all facilities to YYZ enterprises.

(cc) In substantiating material reasons, budget considerations play a role only inasmuch as they provide for the completion of specific missions or work projects such as scientific research programs, temporary understudy programs, and so forth.

b. Temporary employment without a material reason.

(aa) In accordance with section 14, paragraph 2, *TzBfG*, the limitation of an employment contract by a specific calendar date without a material reason is authorized for up to 2 years. Up to this total period of 2 years, the extension of temporary employment contracts is authorized for a maximum of three times.

(bb) A temporary employment contract without a material reason may not be concluded with persons who previously had been employed temporarily or permanently by an organization of the U.S. Forces in Germany. As a result, the provisions of section 46, paragraph 1b, CTA II, and USAREUR's implementing instructions to it, are no longer applicable to temporary employment contracts without a material reason.

c. Extension of temporary employment without a material reason.

(aa) The *TzBfG* permits the extension of temporary employment contracts without a material reason for a maximum of up to three times in a total of 2 years.

(bb) An extension is exclusively meant to be the change of the date of termination of the temporary employment contract agreed on by mutual consent; that is, an agreement by mutual consent that affects only the duration of the time limit imposed on the employment but does not affect other material terms of the employment contract. Aside from that, the extension by mutual consent is possible only during the originally agreed on duration of the temporary employment. If a temporary employment contract is "extended" only after the date of its termination, it constitutes the establishment of a new temporary employment contract, which is legally invalid under section 14, paragraph 2, 2d sentence of the *TzBfG*, when it is done without a material reason.

(cc) If, in addition to the extension of the existing temporary employment, there is also agreement by mutual consent to the change of other material terms of employment (for example, employing organization, duties, remuneration, work-time, work location), it is no longer a question of extending employment authorized by section 14, paragraph 2, *TzBfG*, but rather constitutes the establishment of new temporary employment without the existence of a material reason. According to section 14, paragraph 2, *TzBfG*, imposing limits on an employment contract without the existence of a material reason is legally invalid if limited or unlimited employment had existed before with the same employer.

(dd) As explained in more detail in paragraph 3.3(2), temporary employment automatically changes to permanent employment if the limitation is declared to be legally null and void.

3.2. Ending Temporary Employment Contracts

(1) A temporary employment contract that is limited by a specific agreed-on calendar date automatically ends on the agreed-on expiration date.

(2) A temporary employment contract that is limited by the occurrence of a specific event or for a specific purpose automatically ends on the date of the occurrence of the event or the achievement of the purpose. However, at the earliest, the contract ends 2 weeks after the employee has been informed in writing by the employer of the occurrence of the event or the achievement of the purpose.

(3) The termination of temporary employment contracts by ordinary notice is permissible only if expressly stipulated in the employment contract or tariff agreement. In the absence of a pertinent provision in the CTA II, the following clause will be made part of all temporary employment contracts:

> Employment may be terminated by ordinary notice before the expiration of the temporary employment contract, subject to the advance notice periods of section 44, CTA II. *Das Beschäftigungsverhältnis kann vor Ende des befristeten Arbeitsverhältnisses mit ordentlicher Kündigung unter Einhaltung der Kündigungsfristen des §44 TV AL II beendet werden.*

(4) The statement in (3) above will not be included in temporary employment contracts concluded on the basis of section 21, *BErzGG*. In these cases, the provisions of section 21, paragraphs 4 and 5, *BErzGG*, are applicable.

(5) Temporary employment contracts may be terminated for important reasons as defined by section 626, *BGB*, under the same conditions as set forth in section 45, CTA II, for indefinite employment.

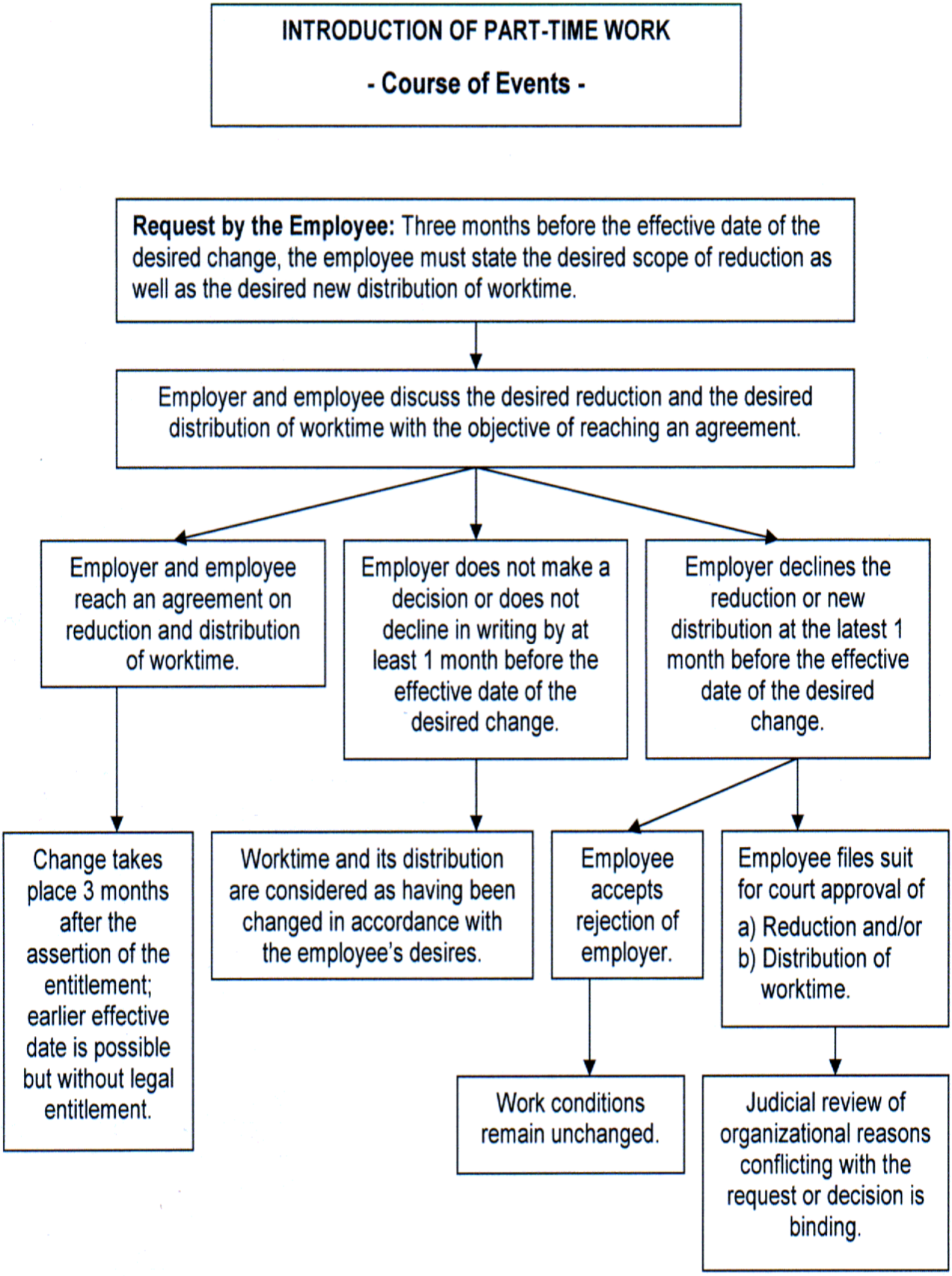
(6) Employees employed under the terms of a temporary employment contract will not be allowed to work beyond the expiration date of the contract or beyond the achievement of the purpose or beyond the occurrence of the event specified in the contract. Employees attempting to do so will instantly be directed to discontinue working and instantly be informed in writing of the achievement of the purpose of the temporary employment contract or occurrence of the event. Approval of work in these instances will automatically change temporary employment into indefinite employment.

3.3. Legally Invalid Limitations and Terminations

(1) Employees who want to claim legal invalidity of the limitation of their employment contracts may file suit with the *Arbeitsgericht* for a declaration that the employment is not dissolved on the grounds of the limitation. Pursuant to section 17, *TzBfG*, suits must be filed at the latest within 3 weeks after the agreed on ending of the temporary employment contract or within 3 weeks after receiving the employer's written notification that the employment has ended due to the limitation.

(2) If the limitation is declared null and void, temporary employment will automatically become indefinite employment. The indefinite employment contract may be terminated by the employer by ordinary notice at the earliest effective agreed on ending date of the limited contract unless the agreement in paragraph 3.2(3) has been made part of the temporary employment contract.

(3) If the limitation is invalid merely because it is not in written form, the temporary employment contract may be terminated by ordinary notice before the agreed on ending date.


INTRODUCTION OF PART-TIME WORK
- Course of Events -
Request by the Employee: Three months before the effective date of the desired change, the employee must state the desired scope of reduction as well as the desired new distribution of worktime.
Employer and employee discuss the desired reduction and the desired distribution of worktime with the objective of reaching an agreement.
Employer and employee reach an agreement on reduction and distribution of worktime.
Employer does not make a decision or does not decline in writing by at least 1 month before the effective date of the desired change.
Employer declines the reduction or new distribution at the latest 1 month before the effective date of the desired change.
Change takes place 3 months after the assertion of the entitlement; earlier effective date is possible but without legal entitlement.
Worktime and its distribution are considered as having been changed in accordance with the employee's desires.
Employee accepts rejection of employer.
Employee files suit for court approval of
a) Reduction and/or
b) Distribution of worktime.
Work conditions remain unchanged.
Judicial review of organizational reasons conflicting with the request or decision is binding.

PART-TIME EMPLOYMENT - SAMPLE LETTER OF DENIAL

Dear Ms./Mr._____:

On _____ you verbally (By letter dated _____ you) requested the reduction of your work time by ____ hours effective _____. Unfortunately, we have to deny your request. Organizational reasons prohibit the desired reduction of your work time.

Due to the denial, you must comply with your obligation to perform duties in accordance with your previous schedule. You are not authorized to arbitrarily reduce or change the distribution of your work time. Failure to work your previous schedule may be grounds for disciplinary action.

Sincerely,

Commander/agency chief with delegated personnel authority

NOTE: This letter may be used only to deny requests filed under the *TzBfG* and the *SGB IX*, part 2 (Severely Handicapped Law). Denials of requests for part-time work filed under the *BErzGG* must specify the compelling organizational reasons for the denial.