

As a conclusion we can say that the labor legislation of Ukraine is different from German law, but in both countries it is aimed at protecting the rights of workers who have children.

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## **BASIC PRINCIPLES OF LABOUR LAW IN EUROPE**

Basis of the employment relationship in every Member State of the European Union is the employment contract freely concluded under private law. Accordingly, general rules of the law of contract – such as the rules on concluding contracts, the consequences of a breach of duty (compensation of damages, cancellation of the contract) and the implications of the exclusion of the primary obligation to render services (e.g. loss of consideration, compensation of damages) – are applicable to the employment contract unless the labour law includes special rules of the employment relationship in every Member State of the European Union that is the employment contract freely concluded under private law. Accordingly, the general rules of the law of contract – such as the rules on concluding contracts, the consequences of a breach of duty (compensation of damages, cancellation of the contract) and the implications of the exclusion of the primary obligation to render services (e.g. loss of consideration, compensation of damages) – are applicable to the employment contract unless the labour law includes special rules.

In several states, among them Germany, particular rules apply in regard to the public service. Only a part of the members of the civil service acts on the basis of an employment contract concluded under private law. The remaining members are public servants whose relationship to the employing state is ruled by public law and is regulated by particular public service laws.

Contrary to Japan, employment contracts are terminable as a basic principle in all Member States of the European Community. The employer has to observe a term of notice and be able to claim grounds for a dismissal, but may then terminate the employment contract. There is no lifelong employment.

However, there are exceptions from this rule – just like there do exist atypical terminable employment relationships in Japan. For example, some German collective agreements provide that employment contracts of employees who have reached a certain age (usually 55 years) and have worked for the company for some time (usually 10 years) cannot be terminated anymore.

National law in the Member States is essentially limited to providing minimum standards in the field of employee protection. They stipulate working conditions the employment contract may not fall short of but may

exceed. This regards occupational health and safety, which is – as shown above – mainly regulated by EC directives. Provisions on working time, vacation, protection against dismissal and the protection of particular groups of individuals such as the severely disabled, young workers and mothers also belong here.

Rules on minimum wages exist in only a few countries, such as France and Italy. In general, the fixing of remuneration is left to collective agreements.

European Community law is marked by the principle of non-discrimination. Article 12 EC prohibits any discrimination on grounds of nationality. According to Article 13 EC, the European Council acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Council availed itself of this competence in regard to labour law in particular and issued an Anti-Discrimination Directive in order to set up a general framework for the realization of equal treatment in employment and occupation. The directive has to be implemented until the end of 2003. Manifold changes in labour law will be necessary. Irrespective of these general anti-discrimination laws, Article 141 EC stipulates the equal treatment of men and women in their professional life, especially regarding equal pay. We will return to this matter later on.

The constitutions of the Member States in varying extent ensure to trade unions and employers the autonomous regulation of their members' working conditions (right to free collective bargaining). In Germany, this warranty is derived from the fundamental right of freedom of association (Art. 9 Basic Law (Grundgesetz)). Also Article 28 of the Charter of Fundamental Rights of the European Union guarantees employers' and employees' organizations the right to collective bargaining and collective action.

The realization of the concept of work councils is characteristic for German and Austrian law: the employees elect representatives in their companies. The employer has to inform the representatives about any important issue and they are involved in decisions concerning the employees. Furthermore, in these countries the employees delegate representatives to the enterprises' supervisory boards where they can co-determine the management of the enterprises.

In various forms, but with less intensity throughout, there exist consultation rights for employees' representatives in other Member States, too. In the meantime, the European Community itself has provided for corresponding legislation.