

Ministerial Draft Bill to the Reduction of Bureaucracy Act – the intentions are good ...

INTRODUCTION

„Our businesses are suffering from bureaucracy burn-out. We urgently need a change in direction.“ These words form the basis for the ministerial draft bill to the Reduction of Bureaucracy Act (BEG IV) which has just been released. Citizens and business are supposed to save a total of 682 million euros through the reduction of unnecessary bureaucracy.

However, it is more than questionable whether the planned changes – seen, as usual, through the „employment law lens“ – will really provide the desired relief, at least with regard to the planned changes to the Verification Act (Nachweisgesetz). Here, in particular, the recent stricter legal regulations have resulted in considerably more effort for employers. To the extent that permanent employment contracts could previously be entered into without adhering to a particular form, the past changes to the Verification Act have led to a de facto written form requirement. For smaller businesses this has signified considerable additional administrative work, and even large businesses have had to first adapt their processes to the changes.

SIMPLIFICATION FOR THE VERIFICATION ACT?

It is noteworthy that the ministerial draft bill leaves the duty to issue written verification under Sec. 2 (1) sentence 3 Verification Act unchanged. Indeed, the duty to provide written verification is only supposed to be waived if and to the extent the relevant information on job duties is contained in an employment contract entered into in digital form under Sec. 126a German Civil Code. If this is not the case or if the employment contract does not contain all of the required information – which often happens, additional written verification would always have to be provided.

In order to be able to enter into an employment contract in digital form, however, both the employee and the employer would have to sign it with a qualified digital signature. In actual practice, these types of signatures are relatively rare among employees because the legal requirements for a qualified electronic signature are considerable and tools such as DocuSign do not necessarily meet these requirements.

ALTERNATIVES

In contrast, meaningful relief – both for small operations and major corporations – would be provided if verification was allowed in text form (e.g. by E-mail). This would ultimately correspond to the informative rather than the legal character of these documents. It remains unconvincing that a mere verification would be subjected to such a strict written form provision even though the employment contract itself could actually be entered into without adhering to a certain form.

It is certainly to be welcomed in this era of widespread digitalization that the permissibility of digital form in employment law is gaining ground, but in order to provide meaningful relief to employers, lawmakers should not just limit themselves to “paper initiatives” but to strengthening and promoting the spread and feasibility of qualified electronic signatures.

Please do not hesitate to contact us if you have questions concerning this topic. If you would like to be included on our mailing list of the subscribers to our free newsletter, please send us a brief **E-mail** with your request.

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