Article Information

Author: David Ey
Service: Employment & Labour

Does Germany do it better?

Visiting academic, Dr Christian Werthmueller, a lecturer at the University of Manheim in Germany, joined Piper Alderman's employment relations team for a couple of months

Visiting academic, Dr Christian Werthmueller, a lecturer at the University of Manheim in Germany, joined Piper Alderman's employment relations team for a couple of months to learn about the Australian employment relations framework and undertake research into what overseas employers need to know when setting up business in Australia. During his time working with the Australian team, Dr Werthmueller noted a number of differences between German and Australian employment relations systems and summarises his key findings below.

The German approach – the German employment law system in a nutshell

The German and the Australian employment law systems are quite different and therefore hard to understand for any company expanding its business abroad. This article provides a general overview of the German system and deals with the main differences between both countries on selected and relevant issues.

Minimum wage and working hours

In general, the German employee is allowed to work a little bit longer and for a smaller minimum wage than his/her Australian counterpart. The German minimum wage is currently 8.84 Euro ($12.07) per hour and the German Working Hours Act allows employees to work a maximum of 48 working hours a week – compared to a 38 hours week according the Australian Fair Work Act.

Continuation of remuneration

A big – if not even the biggest – difference between the two systems is the continuation of remuneration when an employee falls ill. The German Employment Law System is, in this area, very beneficial to employees. Where an employee falls ill, the Continuation of Remuneration Act stipulates that employers must pay the full regular remuneration during the first 6 weeks of illness. Furthermore, the employee has, inter alia, a claim for continuation of remuneration by reasons of caring for a relative, under the Home Care Leave Act, or because of personal reasons, under the German Civil Code.

This entitlement is much more beneficial to German employees than their Australian counterparts who only received 10 days paid personal leave per year under the Fair Work Act.

Termination

The German regulations which deal with termination of an employment contract are also 'employee friendly' – at least from an Australian point of view.

The minimum notice periods in Germany depend on the employees' length of employment and start at two weeks during the probationary period to up to 7 months after completing 20 years of service for the employer.

Also, if the employee has completed 6 months of service and the employer employs more than ten employees in the business unit, a termination will only be lawful under if one of the following circumstances has arisen and a warning notice has been issued under the German Protection against Dismissal Act:

- Employee-Related Reasons, i.e. illness without a proper chance of recovery.
- Breach of contract, i.e. violation of confidentiality or criminal conduct.

- Redundancy, if the employee is, in comparison to other terminated employees, the one with the least need of social protection. A redundancy payment is not required.

Company practice, limitation of liability and the works council

There are several models in the German employment law system, which have only limited equivalents in the Australian system. These are the '*German company practice*, the '*limitation of the employees' liability*' and *a 'works council'*.

The so-called '*Company Practice*' gives the employee a contractual entitlement to regularly granted benefits they receive. This means, that if a company provides optional benefits for the employees on a regular basis three times in a row, i.e. Christmas Benefits, the employer is obliged to continuing granting these benefits in future. The only way an employer can terminate these optional benefits will be by terminating the employment contract.

The '*limitation of the employees' liability*' is a model which has its origins in the fact that employees have a greater risk of destroying expensive equipment owned by the employer, however might not earn not enough money to be able to compensate the employer for the damage. Under this principle, the German Federal Labour Court ruled, that employees' liability has to be limited. This creates a general liability for the employer for any damage caused by its employees, so long as the damage is not caused on purpose. Australian labour law recognises a similar but more limited implied duty on employers to indemnify employees.

The third model which has no equivalent in the Australian system is the establishment of a '*works council*' in business units of at least five employees. A works council consists of a group of employees at the particular employer who are elected to represent their fellow employees. They are involved in decisions relating to employees on an individual and a collective level by the company. These types of decisions include issues such as daily working hours, the use of technical equipment, the restructuring of employees, a planned dismissal or important developments within the business unit. The works councils are distinct from and separate from trade unions. "Consultative committees" established under enterprise agreements are less formal and have (mostly) less real influence.

To sum it up

As discussed, the German employment law system could be seen as more 'employee friendly' in some respects in comparison to the Australian system.

Either way, it is important that governments and business alike keep an open mind when creating their own employment relations framework and standards and consider adopting tried and tested practices from other countries as potentially innovative ways of addressing areas of particular need, controversy or shortcoming of the current system.