

Social security law treatment of the additional remuneration paid to trainee lawyers by private training providers (additional internship remuneration) and remuneration for secondary activities

Information sheet for trainee lawyers
and private training providers
(Date: October 2019)

The Indemnification Agreement printed at the end of this information sheet must be filled in by the training provider, signed giving the place and date of signature and submitted in duplicate (original and copy), at the latest three months before the internship commences, to the responsible Higher Regional Court. This also applies if the training provider does not intend to pay remuneration or to make other payments to the trainee during the internship. There is an exemption where the intention is to assign the trainee to German state training providers.

However, the following notes are only relevant to those training providers who intend to pay remuneration or make other payments to the trainee during the internship.

1. Additional remuneration (additional internship remuneration)

Some private training providers pay additional remuneration (additional internship remuneration) to trainees placed with them for the law office internship or the elective internship which, in accordance with section 3 German Regulation of the Federal Ministry of Finance on the Granting of Subsistence Allowances to Trainee Lawyers (*Verordnung des Finanzministeriums über die Gewährung von Unterhaltsbeihilfen an Rechtsreferendare*) of 27 June 2011, must be offset against the subsistence allowance and are therefore subject to notification.

- a) The German Federal Social Court held in its judgment from 31 March 2015 – B 12 R 1/13 R - that these types of additional remuneration, to the extent that they are not granted for an additional activity which can be delimited from the training, must be regarded as part of the remuneration resulting from the training relationship within the meaning of section 14(1) German Social Code IV (*Sozialgesetzbuch*). This means that the Federal State of Baden-Württemberg, as employer in the social security law sense, must include the corresponding additional remuneration in its calculation of the total social security contribution which it must deduct (section 28d German Social Code IV). The same applies accordingly, to the extent that the training provider has its registered office or a branch office in Germany¹, with regard to the calculation of the income tax to be deducted by the Federal State of Baden-Württemberg (sections 38(1) third sentence, 38a German Income Tax Act (*Einkommenssteuergesetz*)). Moreover, the additional remuneration must also be taken into account when the Federal State of Baden-Württemberg is calculating the subsequent insurance contributions of the trainee lawyers which must normally be paid to the statutory pension insurance scheme after the end of the traineeship (sections 8, 181ff. German Social Code VI). Direct payment by the private training provider of the contributions and taxes due on the additional remuneration does not release the Federal State of Baden-Württemberg, as the employer, from its obligations under public law in this respect. Instead, these obligations can only be satisfied on time and properly if the State Office for Salaries and Benefits Baden-Württemberg (*Landesamt für Besoldung und Versorgung Baden Württemberg* – LBV) responsible for paying out the subsistence allowance

¹ This means the territory of the Federal Republic of Germany

assumes, as a matter of principle, the complete calculation of the emoluments including the additional remuneration.

- b) In view of this, the Higher Regional Court responsible for conducting the training of trainee lawyers are now requiring the carrier of the training provider, where it is a private training provider, to undertake in writing by signing the attached form that, in the event that it should pay additional remuneration to trainee lawyers, as far as its internal relationship with the Federal State of Baden-Württemberg is concerned, it will bear all costs for the social security contributions and income tax due on the additional remuneration including a fixed payment of compensation to cover the costs of any later subsequent insurance and to participate in the following payment procedure for this purpose:
- The private training provider must state on the attached form whether there is an intention to pay additional remuneration or to make other payments to trainees and if so how much these payments will be. The form must be filled in and submitted by three months before the internship commences at the latest in duplicate (original and copy) to the responsible training authority (Higher Regional Court). The Higher Regional Court will keep the copy for its files and forward the original directly to the LBV. If the private training provider only decides to pay additional remuneration to the trainee during the course of the internship or after it has come to an end or if the amount of the additional remuneration paid changes, this must be notified to the responsible training authority without undue delay.
 - A private training provider which intends to pay additional remuneration must pay the fixed payment which it must calculate itself under number 1 of the Indemnification Agreement by the 1st calendar day of the respective month to the LBV at the latest in order to meet the indemnification obligation it has assumed. The composition of this amount and the further procedure differ partially depending on whether the private training provider has its registered office or a branch office in or outside of the Federal Republic of Germany:

Private training provider with its registered office or a branch office in **Germany**¹:

A private training provider with its registered office or a branch office in Germany must transfer to the LBV the entire gross amount of the additional remuneration to be granted to the trainee as well as a compensation payment to cover the costs of health, nursing care and unemployment insurance as well as any subsequent insurance in the statutory pension insurance scheme in advance by the 1st calendar day of the respective month at the latest. The levies due in connection with the payment of additional remuneration will be calculated on the basis of a fixed rate. The highest levels of additional contributions for individual insurance companies, which usually only differ slightly, have been taken into account for the sake of simplicity. The fixed payment is currently 30% of the gross additional remuneration (as at October 2019); the fixed payment will be adjusted by the LBV as necessary. The LBV will arrange for the social security contributions and income tax to be deducted and pay the remaining net amount of the additional remuneration, after receipt of the payment from the private training provider, together with the subsistence allowance to the trainee. Since it is not rare for it only to be established several years after the end of the traineeship whether former trainees must be subsequently insured it would lead to a disproportionate amount of administrative work if the compensation payment had to be reimbursed in those cases where subsequent insurance is exceptionally not necessary. For this reason, assigning a trainee to a private training provider requires this private training provider to consent to not receiving reimbursement of the compensation payment even if there is no subsequent insurance obligation. This fixed solution does not constitute an unreasonable burden for the private training provider since, on average, only approx. 10% of former trainees later go on to work for the state which means that there is a subsequent insurance obligation for the majority.

Private training provider with its registered office **abroad** (without a branch office in Germany¹):

A private training provider with its registered office abroad without a branch office in Germany must only transfer to the LBV the fixed payment, which it must calculate itself under number 1 of the Indemnification Agreement, in advance by 1st calendar day of the respective month which the LBV then pays to the responsible social security carrier. The fixed payment which is currently 41% (as at October 2019) also includes the compensation payment to cover the costs of any later subsequent insurance of the trainee in the statutory pension insurance scheme which will not be reimbursed even if the trainee concerned is exceptionally not subject to a later subsequent insurance obligation owing to the fact that the trainee commences work for the state (see above). In these cases the private training provider itself must calculate and pay to the responsible tax office the income tax due on the additional remuneration and pay the remaining net amount of the additional remuneration to the trainee. The provisions of the respective applicable double taxation treaties must be observed.

- If the amount of internship remuneration has not been established before the internship commences, especially because the activity of the trainee is to be paid on the basis of the time spent, the compensation payment must be made on the basis of an estimate of the expected amount. In this case the private training provider must directly settle the payments required for the actual amount paid by the 5th day of the month following the end of the internship with the LBV.

Private training providers which act in breach of the obligations incumbent on them as a result of signing the Indemnification Agreement cannot expect to be assigned any trainees in the future.

2. Remuneration for secondary activities

The possibility of private training providers being able to employ trainees assigned to them for their law office internship or elective internship for the duration of the assignment on the basis of independent secondary activity devoid of training purposes remains fundamentally unaffected. However, such independent secondary activity only applies where there are special circumstances and these are specifically explained by the private training provider or the trainee. Where there is any doubt, it must be assumed that remuneration which private training providers pay to trainees assigned to them for their law office internship or elective internship for the duration of the assignment constitute additional internship remuneration in the sense of number 1 of this information sheet and not remuneration for secondary activities in the sense of number 2 of the information sheet.

If trainees receive further remuneration, independent of the subsistence allowance, for activity which they carry out at their training provider during the period of their assignment, such activities will be considered to be independent secondary activities devoid of training purposes where the remuneration paid to the trainee is provably the consideration for additional activities which can be clearly delimited from the training relationship and where the trainees are clearly integrated into the operation of the private training provider. This can only be presumed where the following prerequisites are met:

- A written contract is concluded between the private training provider and the trainee regarding the secondary activity which expressly provides for a legally binding and therefore enforceable claim to payment of remuneration only for those activities by the trainee which go beyond the required training services prescribed for the respective internship and the necessary part of the training.
- This contract must precisely regulate the scope of the activity by the trainee to be provided as consideration for the special remuneration (number of hours per week or month).
- The contract must also expressly describe the activities of the trainee which go beyond the training services provided for the respective internship and for which the separate remuneration

must be paid. The contract must therefore expressly contain detailed provisions which make it possible to plausibly and clearly differentiate between the activities for training purposes on the basis of the assignment to the training provider on the one hand and the additional activities assumed and for which separate remuneration must be paid on the other.

The remuneration resulting from secondary activity which is clearly delimited from the training relationship is subject to income tax and an insurance duty in all branches of social security unless it constitutes minor employment (*geringfügige Beschäftigung*). This also applies to the pension insurance scheme since a vested pension entitlement does not extend to separate secondary activity. The duty to calculate and pay the social security contributions and income tax is the duty of the private training provider in such cases of secondary activity. Nevertheless, remuneration arising from such secondary activity must also be notified using the attached form (together with a copy of the secondary activity contract) since, in accordance with section 3 German Regulation of the Federal Ministry of Finance on the Granting of Subsistence Allowances to Trainee Lawyers of 27 June 2011, such remuneration must be offset against the subsistence allowance. Since trainees receive wages from several employers, the wages arising from the second and any further employment relationship are subject to tax class VI (section 38b(1) second sentence no. 6 German Income Tax Act).

3. Other payments

In addition to the additional payments under numbers 1 and 2, additional payments can be made such as, e.g. travel expenses, meals allowance, provision of accommodation, accommodation allowance, health insurance allowance, payment for the costs of running two households.

Such payments can also be paid if no additional remuneration is paid under numbers 1 and 2. The other payments must be stated separately. They must be reviewed with respect to:

- whether they must be taken into account as benefits in kind (where appropriate for tax and insurance purposes)
- whether they need to be stated on the income tax statement
- whether they need to be offset against the subsistence allowance.

Please submit this
Indemnification Agreement
in full in duplicate
(original and copy)

Indemnification Agreement:*)

To
Higher Regional Court

State Office for Salaries and
Benefits Baden-Württemberg
70730 Fellbach

Personnel no.
- Please quote in all correspondence -

For further processing

Name/address of the training provider
Address line 1
Address line 2
Country

I am/We are training trainee Ms/Mr

Surname, first name	
Date of birth	Personnel no.
Address line 1	
Address line 2	

for

☐ his/her law office internship from _____ until _____

☐ his/her elective internship from _____ until _____

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I have read and acknowledge the information sheet "Social security law treatment of the additional remuneration paid to trainee lawyers by private training providers (additional internship remuneration) and remuneration for secondary activities" (date: October 2019).

*) not to be filled in if there is an intention to assign the trainee to German state training providers.

In light of the background explained there I (*in the case of a law office*: in the name of the above law office/*in the case of companies*: in the name of the carrier of the above training provider) hereby submit the following binding declaration:

I undertake/we undertake, to the extent that additional remuneration (additional internship remuneration) is to be granted to the trainee by myself/us, to bear, in terms of the internal relationship with the Federal State of Baden-Württemberg, all costs for the social security contributions and income tax due on this additional remuneration including a fixed compensation payment to cover the costs of any later subsequent insurance. For this I/we agree to the following payment procedure:

- **Training provider with its registered office or a branch office in Germany¹:**

I/We undertake to pay in advance to the LBV the entire gross amount of the additional remuneration stated under 1 of this Indemnification Agreement which is to be granted to the trainee as well as a fixed payment to be calculated myself/ourselves for the social security contributions due on this gross amount which currently amounts to 30%, i.e. a total of 130%, by the 1st calendar day of the respective month at the latest. The current fixed amount of 30% of the gross amount of the additional remuneration (as at October 2019) consists of the employer contributions to the health, nursing care and unemployment insurance and levy U 2 under the German Expenditure Compensation Act (*Aufwendungsausgleichsgesetz*) as well as the employer and employee contributions to the pension insurance scheme. The pension insurance scheme components serve to cover the costs of any later subsequent insurance of the trainees in the statutory pension insurance scheme and are based on the respective current pension insurance contribution.

When making the bank transfer the full name of the trainee as well as the personnel number must be included in the reference field. The bank details of the LBV account with Deutsche Bundesbank Stuttgart are as follows:

IBAN DE65 6000 0000 0060 0015 10

BIC MARKDEF1600

I/We waive the right to receive a copy of this declaration countersigned by the training authority (section 151 first sentence second alternative German Civil Code (*Bürgerliches Gesetzbuch*)).

I/We understand that the LBV will deduct the social insurance contributions and the income tax and later any necessary subsequent insurance and pay the remaining net amount of the additional remuneration together with the subsistence allowance to the trainee. I/We agree to the fixed compensation payment not being paid back to me/us for the event that there is no later subsequent insurance obligation.

¹ This means the territory of the Federal Republic of Germany

- **Training provider with its registered office abroad (without a branch office in Germany¹):**

I/We undertake to pay the fixed payment calculated myself/ourselves under 1 of currently 41 % of the gross remuneration (as at October 2019) in advance by 1st calendar day at the latest of the respective month to the LBV. The fixed payment consists of the employer and employee contributions to the statutory social security scheme as well as levy U 2 on the basis of the German Expenditure Composition Act.

When making the bank transfer the full name of the trainee as well as the personnel number must be included in the reference field. The bank details of the LBV account with Deutsche Bundesbank Stuttgart are as follows:

IBAN DE65 6000 0000 0060 0015 10

BIC MARKDEF1600

I/We waive the right to receive a copy of this declaration countersigned by the training authority (section 151 first sentence second alternative German Civil Code).

I/We understand that the LBV will pay the social insurance contributions and any later subsequent insurance which may be necessary. I/We agree to the fixed compensation payment not being paid back to me/us for the event that there is no later subsequent insurance obligation. I/We further understand that the calculation and payment of the income tax due on the additional remuneration must be paid by me/us to the responsible tax office and that I am/we are responsible for paying the remaining net amount of the additional remuneration to the trainee.

I/We declare:

☐ No payments or additional payments will be made to the trainee.

☐ The following payments will be made to the trainee:

1. Payment of additional remuneration (additional internship remuneration) in the sense of number 1 of the information sheet in Germany¹ and abroad:

☐ The following gross remuneration payments/one-off payments (e.g. holiday pay, Christmas pay) will be granted in EURO for the following months²:

GERMANY

1	2	3	4	5	6
Month /year	Total gross remuneration	One-off payment	18.6% of the sum of columns 2+3	11.4% of the sum of columns 2+3	130% transfer amount sum of columns 2 to 5

Germany: Column 4: 18.60 % = Pension insurance scheme contribution

Column 5: 11.40 % = Other social security contributions

Column 6: Transfer amount = Remuneration from columns 2+3 (100%) and columns 4+5 (30%)

ABROAD

1	2	3	4	5	6
Month /year	Total gross remuneration	One-off payment	18.6% of the sum of columns 2+3	22.4% of the sum of columns 2+3	41% transfer amount sum of Columns 4 + 5

Abroad: Column 4: 18.60% = Pension insurance scheme contribution

Column 5: 22.40 % = Other social security contributions

Column 6: Transfer amount = Employer and employee contributions to the social security (41%)

² In order to ensure that the social insurance contributions and taxes are properly paid, all gross remuneration payments must be stated separately for each individual month of employment. Remuneration which is to be paid in one one-off amount for the entire period must be distributed over all of the months of the internship for the purpose of correct calculation. If the amount of internship remuneration has not been established before the internship commences, especially because the activity of the trainee is to be paid on the basis of the time spent, the compensation payment must be made on the basis of an estimate of the expected amount. In this case the private training provider must directly settle the payments required for the actual amount paid by the 5th day of the month following the end of the internship with the LBV.

The bank transfer must be made in advance by the 1st calendar day of the respective month at the latest!

- ☐ The following payments will be granted³ (e.g. travel expenses, meals allowance, provision of accommodation, accommodation allowance, health insurance allowance) in EURO:

Type of payment	Amount of payment (gross) ⁴

³ The payment of such payments can trigger additional social security or tax consequences in the individual case and can, where appropriate, lead to additional social security contributions (see also the notes on the information sheet under number 3).

⁴ If the amount of the payment has not yet been established before the internship commences, the responsible training authority (Higher Regional Court) must be informed subsequently without delay as soon as the amount is known.

2. Payment of remuneration in the framework of an independent employment relationship separate from the traineeship within the meaning of number 2 of the information sheet:

Note:

An independent employment relationship separate from the traineeship (secondary activity) can only be assumed where the following prerequisites are met:

- A written contract is concluded between the private training provider and the trainee regarding the secondary activity which expressly provides for a legally binding and therefore enforceable claim to payment of remuneration only for those activities by the trainee which go beyond the required training services prescribed for the respective internship and the necessary part of the training.
- This contract must precisely regulate the scope of the activity by the trainee to be provided as consideration for the special remuneration (number of hours per week or month).
- The contract must also expressly describe the activities of the trainee which go beyond the training services provided for the respective internship and for which separate remuneration must be paid. The contract must therefore expressly contain detailed provisions which make it possible to plausibly and clearly differentiate between the activities for training purposes on the basis of the assignment to the training provider on the one hand and the additional activities assumed and for which separate remuneration must be paid on the other.

Where these prerequisites are not met, remuneration paid must be stated under number 1!

- ☐ The following gross remuneration payments/one-off payments (e.g. holiday pay, Christmas pay) will be granted in EURO for the following months⁵.

Please attach a copy of the contract!

Month	Total gross remuneration	One-off payment

- ☐ The following payments³ will be granted (e.g. travel expenses, meals allowance, provision of accommodation, accommodation allowance, health insurance allowance) in EURO:

Type of payment	Amount of payment (gross) ⁶

⁵ All gross remuneration payments for each individual month of the employment must be stated separately.

⁶ If the amount of the payment has not yet been established before the internship commences, the responsible training authority (Higher Regional Court) must be informed subsequently without delay as soon as the amount is known.

The accuracy and completeness of the above is hereby confirmed.

Should I/we only decide during the course of the on-going internship or after it comes to an end to pay remuneration/make payments to the trainee or if the amount of the payments changes, I/we will inform the responsible training authority (the responsible Higher Regional Court) without undue delay.

(Place and date)

(Law office/company stamp and address of the training provider/representative of the training provider)

Bank details (for any repayments)	IBAN BIC
Contact person for questions relating to remuneration	
First name, surname	
Telephone number	
Fax	
E-mail address	