

**Treatment of the additional compensation paid to trainee lawyers
by private training offices under social-insurance-law**

Information leaflet for private training offices and trainee lawyers

(As of: May 2019)

The exemption agreement printed below this information leaflet must be completed by the training office in any case, signed with location and date and submitted to the relevant higher regional court (Oberlandesgericht) no later than four months before commencement of the station training in triplicate (original signed by hand and two copies). This shall apply even if the training office does not intend to pay any compensation or other benefits to the trainee lawyer (Rechtsreferendar / Rechtsreferendarin) during the station training.

The following notes, however, are only relevant for training offices that intend to grant payment of compensation or other benefits to the trainee lawyer.

1. Some private training offices pay additional compensations (station compensations) to trainee lawyers assigned to them in the lawyers' station, the mandatory elective internship or the supplementary traineeships; these must be set off against the maintenance support for trainee lawyers pursuant to the proviso of sect. 3 para. 2 SiGjurVD and therefore are reportable.
 - a. The Federal social court (Bundessozialgericht) decided by ruling from 31 March 2015 - B 12 R 1/13 R (SGb 2016, 210) that such additional compensations, unless granted for additional employment separate from training, shall be deemed part of the work compensation resulting from the lawyer's traineeships in the meaning of § 14 para. 1 SGB IV. Because of this, the Free State of Bavaria as the employer from the point of view of social security law must include the corresponding additional compensations in calculation of the total social security contribution to be paid by it (§ 28d SGB IV). This shall apply accordingly for calculation of the wage tax to be paid by the Free State of Bavaria where the training office has its seat in the country (§ 38a EStG). Furthermore, additional compensation shall also be considered in calculation of the amounts to be regularly paid by the Free State of Bavaria for subsequent insurance of the trainee lawyers in the statutory pension insurance (§§ 8, 181 et seqq. SGB VI) after the end of the traineeships. Payment of the contributions and taxes due to the additional compensations directly by the private training office cannot exempt the Free State of Bavaria from any public-law obligations it is subject to in this respect. Their timely and proper performance is, instead, only ensured if the state office for finance responsible for payment of the maintenance support generally takes over the complete settlement of compensations, including any additional compensations.
 - b. In light of this, the relevant training authorities in Bavaria* assign trainee lawyers to private training offices for the lawyers' station, mandatory elective internship and supplementary traineeships only under the prerequisites that the operator of the training office commits in writing in the enclosed **form**, which can also be

* In the lawyer's station, the supplementary traineeships and the professional fields of "Justice", "Lawyers" and "International law and European law" the locally competent higher regional court; in the professional fields of "Administration", "Economy", "Labour and social law" and "Tax law" the locally responsible government.

downloaded from the website of the state law examination office (Landesjustizprüfungsamt) (linked to from each of the websites of the higher regional courts (Oberlandesgerichte) and governments) to bear all costs for the social security contributions and wage taxes arising for the additional compensation, including a flat-rate compensation to compensate for any costs for possible later subsequent insurance in the internal relationship with the Free State of Bavaria if granting any additional compensation to the assigned trainee lawyer, and to cooperate in the settlement procedures presented below (§ 48 para. 6 JAPO):

- The private training office shall indicate in the enclosed form whether and, if applicable, at what amount any additional compensations or other benefits are to be granted to the trainee lawyer. The completed form generally must be submitted to the relevant higher regional court no later than four months before commencement of the station training in triplicate (original signed by hand and two copies). Changes must be reported to the relevant training authority without delay.
- A private training office that wants to grant additional compensations will then receive a calculation based on its information from the state finance authority. The private training office shall pay the amount indicated there to the state finance authority without delay in one total in order to meet the exemption obligations assumed by it. The composition of this amount and the following proceedings partially differ depending on whether the private training office is headquartered in Germany or abroad:
 - **Private training office in Germany:**

A private training office headquartered in Germany must pay the entire gross amount of the additional compensation to be granted to the trainee lawyer during the station and the employer's shares for social security arising for this as calculated by the state finance authority to the state finance authority. The state finance authority shall initiate payment of the social security contributions and wage tax, and shall pay the remaining net amount of the additional compensation to the trainee lawyer together with the maintenance support after receipt of the payment from the private training office. For the private training office, this has the benefit that it does not have to calculate the required deductions itself.

The private training office will also receive an invoice for a flat-rate compensation payment to compensate for the costs of possible later subsequent insurance of the trainee lawyer in the statutory pension insurance, also to be paid without delay to the state finance, aligned with the respective current pension insurance contribution (currently 18.6%). Since it is often only clear several years after the end of traineeships whether a former trainee lawyer must be subsequently insured or not, it would mean unreasonably high administrative effort if such compensation payments had to be reimbursed in exceptions where subsequent insurance does not apply. For this reason, assignment of a trainee lawyer to a private training office requires that it agrees that the compensation payment will not be reimbursed even if later subsequent insurance does not take place. This flat-rate solution is not an unreasonable burden for the private training office, since only about 10% of former trainee lawyers are employed by the state later anyway[†], so that most of them are to be included in subsequent insurance.

[†] Cf. report of the committee of the conference of the ministers of justice on coordination of the lawyers' training "The Bologna process and its possible effects on lawyers' training", as of: 15 October 2005, published in https://www.justiz.nrw.de/JM/schwerpunkte/juristenausbildung/bologna_prozess/berichte2005/abschlussbericht.pdf.

➤ Private training office abroad:

A private training office headquartered abroad only must pay the employer's shares for social security contributions subject to the additional compensation as invoiced to it by the state finance authority to the state finance authority that are then paid to the relevant social security providers by the state finance authority. The flat-rate compensation payment to compensate for the costs of possible later subsequent insurance of the trainee lawyer in the statutory pension insurance shall be added to this, which is not to be reimbursed even if later subsequent insurance of the respective trainee lawyer does not occur in exceptions due to transfer to state service (see above). Calculation and payment of the wage tax arising for the additional compensation to the relevant tax office and payment of the remaining net amount of the additional compensation to the trainee lawyer shall in this case be the responsibility of the private training office. The respective applicable double taxation conventions must be observed.

Private training offices that violate their obligations founded by signature of the exemption agreement must expect that they will not be assigned any trainee lawyers anymore in future.

2. This shall not affect the option of secondary employment independent of training purposes (sect. 3 para. 3 SiGjurVD). However, this is only present if the compensation paid to the trainee lawyer verifiably is compensation for additional work that can be clearly distinguished from the training in which the trainee lawyer is visibly integrated into the operation of the private training office. This may be assumed under the following prerequisites:

- A written agreement on the secondary work must be concluded between the private training office and the trainee lawyer that expressly only stipulates payment of a compensation for such work of the trainee lawyer - as described in the contract - that goes beyond the training services specified in the shared publication of the Bavarian state ministries of justice and internal affairs and the Bavarian bar associations on training of trainee lawyers (trainee lawyer training publication) for the respective station.
- This contract must precisely stipulate the scope of time during which the work is to be rendered in return for the compensation by the trainee lawyer (number of hours per week or month).

The compensation for such secondary activity that can be distinguished from the training shall be subject to wage tax deductions and insurance obligations in all branches of social security, except in case of marginal employment. This shall include pension insurance, since the warranty of pension entitlements does not cover the separate secondary work. The obligation to calculate and pay the social security contributions and wage tax shall be with the private training office in case of such secondary work. Nevertheless, compensation from any such secondary work shall be indicated in the enclosed form (including a copy of the contract on the secondary work), since they are to be set off against the maintenance support according to the proviso of sect. 3 para. 3 SiGjurVD. Since the trainee lawyers receive wages from several employers at the same time, the wages from the second and any further employment are subject to wage tax class VI (§ 38b para. 1 no. 6 EStG).

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Exemption agreement:

Please submit this declaration **completely** (all 5 pages) **in triplicate** (1 original and 2 copies).

Name/company name of the training office
Street, house number
Postal code, place,
Country

I/we train Mr trainee lawyer/Ms trainee lawyer

Name, first name	
Date of birth	Business reference of the income office
Street	
Postal code, place,	

in

the lawyers' station from _____ to _____

in the mandatory elective internship from _____ to _____

in supplementary traineeships from _____ to _____

after completion of the mandatory elective internship until leaving traineeships

after completion of supplementary traineeships until leaving traineeships

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I have taken note of the information leaflet on treatment of additional compensations to trainee lawyers by private training offices under social-security-law (as of May 2019). In light of the explanations there, I bindingly declare as follows (*in case of law firms*: in the name of the above law firm/*in case of companies*: in the name of the operator of the above training office):

I/we commit to bearing all costs for any social security contributions and wage taxes arising for such additional compensations in the internal relationship with the Free State of Bavaria if I/we grant any additional compensation to the trainee lawyer, including a flat-rate compensation payment for compensation of the costs for possible later subsequent insurance. I/we agree with the following settlement procedure for this:

➤ **Private training office in Germany:**

I/we commit to pay, upon receipt of a calculation from the state finance office compiled based on my/our information in this form,

- **the entire gross amount of the additional compensation to be granted to the trainee lawyer,**
- **the employer's shares for social security arising for this as calculated by the state finance office**
- **and a flat-rate compensation payment calculated by the state finance office to compensate for the costs of possible later subsequent insurance of the trainee lawyer in the statutory pension insurance, also to be paid without delay to the state finance, aligned with the respective current pension insurance contribution (currently 18.6%) to the state finance office without delay.**

I/we waive return of a copy of this declaration counter-signed by the training authority (§ 151 sentence 1 alt. 2 BGB).

I am/we are aware that the state finance office will initiate payment of the social security contributions and wage taxes and any subsequent insurance possibly required at a later time, and that it will pay out the remaining net amount from the additional compensation to the trainee lawyer together with the maintenance support. I/we agree that the flat-rate compensation payment is not to be returned to me/us even if later subsequent insurance does not occur.

➤ **Private training office abroad:**

I/we commit to pay, upon receipt of a calculation from the state finance office compiled based on my/our information in this form,

- **the employer's shares for social security arising for this as calculated by the state finance office**
- **and a flat-rate compensation payment calculated by the state finance office to compensate for the costs of possible later subsequent insurance of the trainee lawyer in the statutory pension insurance, also to be paid without delay to the state finance, aligned with the respective current pension insurance contribution (currently 18.6%) to the state finance office without delay.**

I/we waive return of a copy of this declaration counter-signed by the training authority (§ 151 sentence 1 alt. 2 BGB).

I/we know that the state finance office will pay the social security contributions and any subsequent insurance that may later be required. I/we agree that the flat-rate compensation payment is not to be returned to me/us even if later subsequent insurance does not occur. I/we further know that I am/we are responsible for calculation and payment of the wage tax arising for the additional compensation to the relevant tax office and payment of the remaining net amount of the additional compensation to the trainee lawyer.

I/we declare:

The trainee lawyer will not receive any payments or other benefits.

[If **no** payments or other benefits are paid, no further information needs to be provided on the following pages. Please do not forget to **sign at the top of page 5** and always submit the declaration **in full (all 5 pages)!]**

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The following benefits are paid to the trainee lawyer:

1. Payment of additional compensation (station compensation):

a) The following gross compensation is paid for the following months*:

Total gross compensation in EUR	Month

b) The following benefits (e.g. travel expenses, provision of accommodation, contribution to health insurance, holiday allowance, Christmas allowance, lump sums) are granted:

Type of benefit/lump sum	Amount of benefit (gross) in EUR**

* For proper discharge of the social security contributions and taxes, all gross compensations for every individual month of employment must be indicated separately. Compensation that is to be paid as a one-time payment shall be spread out across all months of the station for settlement-technical reasons.

In case of training in mandatory elective internship, only the payments for the three months intended for in § 48 para. 2 sentence 1 no. 4 JAPO are to be indicated.

** If the amount of the benefits is not clear yet at commencement of the station training, it must be reported to the relevant training authority without delay subsequently as soon as it can be determined precisely.

2. Payment of compensation in the scope of employment independent of training (secondary employment) in the meaning of item 2. of the information leaflet:

Note:

Any employment independent of training (secondary employment) shall only be assumed if there is written consent that

- expressly only stipulates payment of a compensation/benefit for such work of the trainee lawyer - as described in the contract - that goes beyond the training services specified in the shared publication of the Bavarian state ministries of justice and internal affairs and the Bavarian bar associations on training of trainee lawyers (trainee lawyer training publication) for the respective station
- and that precisely specifies for the time scope of the work to be rendered by the trainee lawyer (number of hours per week or month).

Where such prerequisites are not present, paid compensation must be stipulated in item 1.!

a) The following gross compensation is paid for the following months*:

Total gross compensation in EUR	Month

b) Compensation shall be paid according to hours/days worked with the monthly settlement, which is submitted

c) The following benefits (e.g. travel expenses, provision of accommodation, contribution to health insurance, holiday allowance, Christmas allowance, lump sums) are granted:

Type of benefit/lump sum	Amount of benefit (gross) in EUR**

Please always include a copy of the contract for secondary employment!

* All gross compensations for every individual month of employment must be indicated separately.

** If the amount of the benefits is not clear yet at commencement of the station training, it must be reported to the relevant training authority without delay subsequently as soon as it can be determined precisely.

I represent that the above information is accurate and complete.

If I/we only decide to pay compensation/benefits to the trainee lawyer during the training station or after its completion, or if the amount changes, I/we shall inform the relevant training authority of this without delay.

(place and date)

(firm/company stamp and signature of the trainer/representative of the training office)

Operation number (in Germany)		
Account information (for possible repayments)	IBAN	BIC
Contact in compensation matters		
First name, Name		
Phone number		
Fax		
Email address		



This offer for conclusion of an exemption agreement shall be accepted for the Free State of Bavaria.

Higher regional court (Oberlandesgericht) _____

(Signature, name stamp)

Government _____

(Signature, name stamp)