

German industry & government launch digital worker ed programmes

Germany

09.04.2019

Siemens to invest EUR 100 m, government funding underway since January 1

With digitalisation and automation radically changing the working environment, German government and industry are paving the way for worker continuing ed programs to give employees necessary technical skills and prepare them for the future.

The Siemens Group and its general works council have agreed on a EUR 100 million Future Fund, which will be used to create continuing education projects for individual employees over the next four years.

Last year, the German government passed the *Act to Strengthen the Opportunities for Qualification and for More Protection in Unemployment Insurance* – part of the *Qualifications Opportunities Act*– which came into force on January 1, 2019 and allows the Federal Employment Agency to provide support and continuing education to workers. Different from before, this law enables the agency to offer educational support to German workers during ongoing employment and no longer only in the context of unemployment or qualification as a part of restructuring measures. The core element of the act is Section 82 *German Social Code III* (SGB III), which allows both employees and employers to be reimbursed for educational and re-training expenses.

Both initiatives come in the face of tremendous change in the German economy and labour market as industries are rocked by digital technology and many employees – both blue and white collar – are no longer able to keep pace. According to surveys, 15% of existing German jobs will be eliminated over the next decade, and 30% of all jobs will change significantly. The federal government forecasts that more new jobs (2.1 million) will be created than current jobs (1.3 million) eliminated through digitalisation.

As a result, each company must actively respond to these changes in the digital landscape in order to remain internationally competitive over the long term. Workers are also encouraged to take an active role in learning the skills necessary to compete and remain employable.

Siemens' continuing education and retraining

The aim of the Siemens' EUR 100 million Future Fundisto create a learning environment capable of coping with constant change and to create a workforce that is able to continuously learn and adapt. The 2,900 employees in the Siemens power plant division, which are slated to lose their jobs in the near future, could directly benefit from these retraining programs.

Government boosts support for continuing ed

Until recently, retraining and continuing education during ongoing employment were the responsibilities of employees, with most workers only able to pursue continuing education in their free time. In this environment, business did not give retraining the support it deserved, and for good reason. Continuing education either required employees to take educational leave or for employers organising training baring a significant portion of the costs. Realising that under these scenarios continuing education was unattractive to both parties and was only financed only by large companies, the government stepped in with legislative support.

For critics, government support for retraining and continuing education was overdue. Until now, federal education laws enable employees to leave for only five days a year. Workers who paid for additional retraining days out their own pocket could only hope to recoup their investment by deducting the costs from their taxable income, unless, of course, their employer helped fund this education.

German lawmakers finally responded last year by passing the first part of the *Qualifications Opportunities Act*, which allows for both employees and employers to be reimbursed for retraining costs. For employees to be eligible for government support, it is necessary that:

- Skills are taught that go beyond job-related training requirements.
- The employee has not taken part in any continuing education programme eligible for support in the last four years.
- The programme takes place outside the workplace and is more than 160 hours in duration.
- The programme and the executing agency are government approved.
- The employer contributes to the costs to an appropriate extent (contributing between 0 and 80% of fees), depending on its size.

Funding should support employees whose jobs are affected by digitalisation-related structural change or are skills in special demand. This restriction does not apply to employees in companies with fewer than 250 workers if they commence participation after December 31, 2020. In such small enterprises, the employer may opt-out to fund training for severely disabled employees and workers 45 years of age and older.

Employers can apply for grants for remuneration of the costs of on-site employee training, provided that they make continuing education possible during ongoing employment and fulfill all necessary prerequisites. The percentage of remuneration they are able to receive (between 25% and 75%) depends on the size of company. Compulsory continuing education is noteligible for funding.

Continuing education and German labour law

German labour law, as it now stands, affects this continuing education initiative in the following ways:

- Employees are not entitled to reimbursement of costs from employers, who can refuse to cover costs of training it considers useless. The act is merely an incentive system for the parties.
- Since employees receive wages during continuing education, employment contract obligations continue to apply, particularly regarding working hours unless the training takes place during educational leave. Continuing education and work must be coordinated between the employee and the

employer. The act does not entitle employees to adjusted working hours or additional paid time off.

- Employers should make the financing of retraining or continuing education conditional on an employment repayment agreement in the event of termination. When drafting these agreements, the following points should be considered:
 - Because continuing education takes place separately from work, a separate agreement in addition to the employment agreement is required.
 - If the continuing education course takes more than one month, the agreement may apply to employees for up to 24 months.
 - There is no reimbursement obligation if the training brings internal advantages only for the employer and was initiated by the employer.
 - Repayment is considered only if the reason for employment termination is not attributable to the employer, i.e. the employee resigns upon her/his own decision.
 - The agreement must stipulate that if the employee leaves the company before the end of his employment term, repayment must be made pro-rated with regards to the remaining period of commitment depending on when the continuing education programme was concluded. It is also permissible to have the remaining amount immediately repayable when the employment relationship ends.

The works council has the right to propose collective continuing education and the right of consultation and codetermination regarding the implementation of specific educational programmes. The decision whether a continuing education programme is implemented, i.e. whether a budget is made available, or not is, in principle, up to the employer alone. Employee representatives, however, must agree on how a continuing education programme is implemented.

If the requirements for certain positions are changed in such a way that that workers are no longer qualified to do these jobs, employee representatives are also granted a right of codetermination regarding the introduction of continuing education programmes. This could apply to structure-related continuing education, with the result that all continuing education should be discussed extensively with employee representatives and regulated in the works agreement.

It should not be forgotten that employee representatives are receptive to continuing education because its helps to prevent employee dismissals resulting from structural change.

For more information on this eAlert and how it could affect your business, contact one of the following local CMS experts:

Dr. Gerlind Wisskirchen, Dr. Janis Block, Jan Schwindling, CMS Deutschland

KEY CONTACTS



Gerlind Wisskirchen

Partner, Cologne

Rechtsanwältin | Fachanwältin für Arbeitsrecht

+49 221 7716 345

gerlind.wisskirchen@cms-hs.com



Janis Block

Senior Associate, Cologne

Rechtsanwalt | Fachanwalt für Arbeitsrecht (Certified lawyer for labor and employment law)

+49 221 7716 367

janis.block@cms-hs.com
