International HR Newsletter

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1. Growth Opportunities Act: Update planned changes and implementation

Brief summary: The final planned release of the Growth Opportunities Act on January 1, 2024 has not yet occurred: all of the issues it contains, such as the increase in per diems for meals, allowances for company events and the abolition of the one-fifth rule for severance pay, cannot yet be implemented as of January 1, 2024. Only a few points were approved in the context of a further legislative process.

As announced, the Federal Ministry of Finance published the draft bill for a law to strengthen growth opportunities, investments and innovation as well as improve tax simplification and tax fairness (Growth Opportunities Act) on July 14, 2023.

The final planned approval by the Federal Council on December 15, 2023 did not take place; only a small part of the Growth Guarantee Act was transferred to other laws: unfortunately, the payroll tax issues that are important for the HR sector have not yet been adopted, although they had actually already been approved. That is why we will list these and provide additional information as soon as the law has been confirmed.

- The one-fifth rule for severance pay remains in place for the time being, i.e. the two-stage review of the applicability of the one-fifth rule for severance pay remains in place FOR THE TIME BEING. Once the law has been approved, the one-fifth rule will no longer apply to payroll accounting.
- Additional expenses for meals will NOT YET be adjusted from 14 euros to 15 or 16 euros for more than 8 hours of absence and from 28 euros to 30 or 32 euros in the last resolution of the Growth Opportunities Act. That is why, for the time being, it will remain at 14 euros for more than eight hours of absence and the day of arrival and departure and 28 euros for a full day of absence from January 1, 2024.
- Group accident insurance will STILL remain at a flat-rate amount of a maximum of 100 euros, which can be taxed at 20%. The elimination of this limit has NOT been adopted for the time being.
- Company events will remain tax-free at 110 euros for up to two events; the planned increase to 150 euros is still pending.

2. Business trips abroad: New flat rates will apply from January 1, 2024

The Federal Ministry of Finance has published the new flat rates for additional meal expenses and accommodation costs for trips abroad, which an employer can pay tax-free to employees travelling on business from January 1, 2024.

As always, you will find these in our 2024 Travel Expenses Vademecum.

3. Electric company cars and charging current: how to document the reimbursement of expenses

Brief summary: The question of how employers can reimburse employees for charging costs for an electric company car free of tax and contributions that they have actually incurred is becoming increasingly frequent: the solution is either precise recording or a flat-rate reimbursement.

The charging current used by the employee for an electric company car can be reimbursed without tax or contributions. The employer has to settle the expenses for each charging process individually with the employee. In concrete terms, this means that a separate electricity meter (stationary, mobile or integrated in the wallbox, such as a MID meter) must be used to record exactly how many kWh of electricity were used for each individual charging process for the electric company car and the amount of the employee's individual electricity costs.

It is only sufficient to read the electricity meter once a month if this electricity meter is only used to charge the electric company car and no other vehicles or devices. The employee must inform the employer of both the number of kWh consumed and the electricity costs so that the latter can calculate the reimbursement of expenses to be reimbursed without tax or contributions.

If the employee foregoes the administrative effort of providing individual proof, the employer can reimburse the flat rates published by the Federal Ministry of Finance free of tax and contributions. This

amounts to up to 70 euros per month, depending on the vehicle and charging option.

4. How to differentiate between entertainment expenses and courtesies

Brief summary: The distinction between entertainment expenses and courtesies is not easy, but important, as many tax benefits apply to courtesies in contrast to entertainment expenses.

The following applies to entertain employees:

Employer gifts to employees serve to organise the workplace and create favourable working conditions. That is why they are not considered a remuneration, are not recognised as wages and are not subject to social security contributions.

However, if the employer provides hospitality to an employee, the hospitality generally results in wages that are subject to tax and contributions. Hospitality is to be recognised at the respective non-cash benefit values, e.g. for breakfast, lunch or dinner (planned for 2024: 2.17 euros for breakfast, 4.13 euros for lunch/dinner).

Important: The non-cash benefit exemption limit of 50 euros cannot be used.

If a business partner is given a courtesy gift (e.g. coffee at a meeting), the expenses are deemed to be business expenses in full.

5. Used electric or hybrid company cars: which assessment basis should apply?

Brief summary: For many employees, a company car is an important part of their salary. Thanks to the constantly growing variety of models, electric cars and plug-in hybrids are now becoming more interesting for employees. Electric and hybrid company cars are particularly favoured by legislators and are becoming increasingly popular. It is precisely a half or a quarter of the gross list price for the flat-rate one percent rule that creates an immense tax advantage.

the assessment basis for the taxation of private use of electric and hybrid electric vehicles has been reduced. Accordingly, for certain vehicles, it is not the full gross list price but a half or a quarter of the gross list price (BLP) that is to be used for the valuation of the non-cash benefit under the flat-rate one percent rule. For this purpose, the vehicle must fulfil specified criteria within a purchase period. e.g.

- for pure e-vehicles with a gross list price of max. 60,000 euros → use ¼ of the gross list price;
- for hybrid vehicles, a CO2 emission of max. 50 grams per kilometre or alternatively a purely electric minimum range of 40 km (purchase after December 31, 2018 and before January 1, 2022), 60 km (purchase after December 31, 2021 and before January 1, 2025) or 80 km (purchase after December 31, 2024 and before January 1, 2031) → use 1/2 of the gross list price.

The circumstances when the vehicle was first registered are not to be taken into account, but are only indicative for the amount of the gross list price before the possibly permissible halving or quartering. If a used electric or hybrid company car is purchased, the date of purchase is generally decisive, not the date of initial registration.

The Growth Opportunities Act envisaged an increase in the gross list price to 80,000 euros, which was then reduced to 70,000 euros. However, this regulation has NOT been finalised and so does not yet apply.

Special regulation applies to company car leasing

In its letter dated November 5, 2021, the Federal Ministry of Finance stipulates that, in deviation from the above principle, a special rule applies when a company car is provided for an employee. Contrary to the wording of the law,

- the date on which the employer first provides the electric or hybrid company car to the employee is decisive with regard to the benefit,
- and not the date on which the employer purchased, manufactured or leased the electric or hybrid company car.

Change of employee does not lead to changes

If an electric or hybrid company car has already been provided to an employee, the previous valuation regulations remain in place if the authorised user changes. It is not necessary to re-examine

which benefits apply with respect to a first-time assignment to the new employee. The previous benefits continue to apply unchanged.

6. Review of contribution assessment ceiling

Brief summary: An annual review of the compulsory insurance limit must be carried out for all employees. In the event of a possible change, employees must still have time to select a new health insurance fund, as this must be taken into account in the January payroll and the health insurance funds must be informed accordingly.

The annual earnings limit (compulsory insurance limit) determines whether an employee is covered by statutory health insurance or can take out voluntary or private insurance. As the contribution assessment limits are adjusted by law every year, it is necessary to check after the December payroll every year whether the employee's income is above or below this compulsory insurance limit.

In principle, employees are exempt from compulsory insurance in the statutory health insurance scheme if their regular annual salary exceeds a specified salary limit. A projection is used to check what income can be expected in the coming year and whether the limits were exceeded in the previous year.

Employees whose annual salary exceeds the compulsory insurance threshold of 69,300 euros will cease to be compulsory members of the health insurance fund from January 1. These employees can take out voluntary statutory health insurance or private health insurance.

In order to ensure insurance cover, employees must immediately arrange for continued insurance with the health insurance fund of their choice.

If the employee opts for private health insurance, the employer requires the certificate in accordance with § 257 SGB V (KV) and § 61 SGB XI (PV) to obtain the employer's share of health insurance and long-term care insurance contributions. This certificate must be submitted to the employer for payroll accounting in January.

Falling below the compulsory insurance threshold:

Employees whose annual salary falls below the compulsory insurance threshold of 69,300 euros become compulsory members of a statutory health insurance fund. If the employee changes health insurance provider, the information must be provided to the employer for the payroll accounting in January.

For privately insured persons, there is a special compulsory insurance limit for employees who were already privately insured before December 31, 2002. This amounts to 62,100 euros.

7. Granting of child sickness benefits

Brief summary: The Nursing Studies Strengthening Act (Pflegestudiumstärkungsgesetz) now also regulates the entitlement to child sickness benefits without a time limit in the event of inpatient treatment of the insured child and with a continuation of the extended number of sick days.

The changes will come into force on January 1, 2024. The COVID-19-related extension of the entitlement to benefits will cease on December 31, 2023.

This also includes an increase in the number of child sick days per child and parent to 15 days and for single parents to 30 days for a limited period for the years 2024 and 2025; from today's perspective, the entitlement will then revert to 10 days if no further changes are introduced.

8. New reporting obligation for parental leave from January 1, 2024

Brief summary: From January 1, 2024, the reporting obligations for parental leave will be adjusted: In addition to the DEUEV interruption notification, the start and end of the absence must be reported: notification reason 17 covers the start and notification reason 37 covers the end of the parental leave.

The lack of information at the health insurance funds regarding the examination of the insurance case after the end/interruption of employment subject to compulsory insurance was hopefully ended by the new regulations in the 8th SGB Amendment Act.

Parental leave for members with statutory health insurance and those with voluntary statutory

health insurance must be reported. The new reporting obligation only applies to parental leave that begins on or after January 1, 2024 and is carried out via the payroll programmes.

We would like to summarise some important tips: In the case of multiple births, parental leave is only reported once, not per child. In the event of a renewed subsequent maternity leave, parental leave must be terminated on the day before the start of maternity leave; several consecutive periods of parental leave do NOT have to be reported separately. If you change health insurance provider, you must submit a (further) start notification to the new health insurance provider. An end-of-employment notification must also be submitted at the end of employment.

Finally, even if the system is changed, parental leave is terminated from the old system with notification reason 37 and re-registered from the new system with notification reason 17.

9. Minimum wage and mini-jobs: Increases from January, 2024

Brief summary: A minimum wage of 12.41 euros per hour is to apply from January 01, 2024. The higher minimum wage entails a higher mini-job pay threshold of 538 euros per month.

From January 2025, another increase is to follow, again by 41 cents to 12.82 euros per hour. Since the minimum wage and the marginal earnings threshold have been legally linked since October of 2022, the mini-job threshold will increase to 556 euros from 2025. Until the law was amended in 2022, minimum wage increases meant that mini-jobbers were allowed to work fewer hours per month. This is no longer necessary at this point: The maximum monthly wage of mini-jobbers corresponds to the remuneration earned for ten hours per week paid at the minimum wage.

The amount earned in the mini-job does not change upwards: As of January 1, 2023, the limit of the transition range was raised to 2,000 euros and is now fixed.

10. Parental status in long-term care insurance: when and how and effects on interest receivables

Brief summary: Employees with children have received child-related contribution relief since July 1, 2023. In practice, this increasingly raises the question of whether parents have to prove that they really are parents and how this should be done. According to the considerations of the legislator, this can reduce an interest claim of the employee at a later date.

The amount of contributions to long-term care insurance depends directly on whether and how many children a person has. If the employer does not take the number of children into account correctly in the payroll accounting, an excessively high rate of long-term care insurance may be paid.

However, the transitional regulation from the PUEG expressly permitted this solution until June 30, 2025.

What was new was that this excessively high long-term care insurance contribution would result in additional payments to the employee at a later date and these were to be subject to interest.

How can this interest rate be avoided? A statutory regulation should now provide an approach to this, but unfortunately this has also not yet been finalised. However, the basic consideration here is that employers who have already exercised appropriate care in recording the number of children should no longer be subject to interest obligations.

How is the number of children determined?

Here, too, the legislator offered two options:

- Request for birth certificates and comparable evidence from the employee
- Enquiry of the children and written confirmation of the same by the employee

Another challenge is the question of parental status: The term "parents" initially includes the child's mother, i.e. the woman who gave birth to the child, and the father who is married to the child's mother at the time of birth or who has recognised paternity or whose paternity has been established by a court.

However, adoptive, step and foster parents are also considered "parents" in the sense of parental status under certain conditions.

Once you can prove that you are a parent, you are exempt from the contribution surcharge for childless persons in long-term care insurance for the

rest of your life. This applies even if the parental status no longer exists at a later date (e.g. if the child dies).

The situation is different with the contribution deductions, which apply to parents from the second child onwards.

To date, there is no legally prescribed way of proving parental status. It is important to provide proof of parental status and the number of children under the age of 25 to the body paying the contributions (usually the employer) or, in the case of self-payers, to the long-term care insurance fund. This only applies if the information is not already available there.

A simplified procedure applies until June 30, 2025. In this case, it is sufficient to provide the required information on the eligible children informally. Proof is deemed to have been provided – and the information may be used without further verification. No further evidence is required. This is also possible in order to have the first-time parent status indicated, which means that the contribution surcharge for childless persons no longer applies.

Please note that employees are legally obliged to provide truthful and complete information. If the charges are incorrect, the following applies: a correction and refund will be made only if the insured person has paid too many contributions. No retroactive correction will take place if this is not the case.

The office paying the contributions must retain the proof for the duration of the insurance relationship that justifies the payment of contributions to long-term care insurance and beyond that until the expiry of a further four calendar years. The retention obligation also applies to notifications and the documentation of notifications in the simplified verification procedure.

11. New severely disabled levy from January 1, 2024

Brief summary: If an employer has more than 20 employees, the employment of a severely disabled person will prove to be a financial advantage for the employer in the context of the severely disabled levy. From January 1, 2024, the amounts to be paid by the employer will change, so this will only apply to the 2024 levy in March of 2025.

In this context, special regulations for smaller employers remain with a requirement to employ individuals (one or two severely disabled employee):

- Companies with an average of at least 20 and at most 39 employees must employ one severely disabled person.
- Companies with at least 40 and at most 59 employees must employ two severely disabled persons.

From 60 employees on up, the calculation changes fundamentally. Five percent of workplaces must then be filled by severely disabled persons, with fractions of 0.5 and more being rounded up in the calculation.

From 2024, the following levies will apply to unfilled mandatory workplaces for severely disabled persons:

- With an annual average employment rate of three percent, but less than the applicable mandatory rate: 140 euros
- With an annual average employment rate of two to three percent: 245 euros
- With an annual average employment rate of more than 0 percent to less than 2 percent: 360 euros
- New fourth level: If no severely disabled persons are employed at all: 720 euros

There are different rules for employers with less than 40 employees . If less than one severely disabled person is employed on average per year, the amount is 140 euros; if no severely disabled persons are employed at all, the amount is 210 euros.

Employers with less than 60 employees and an annual average employment of less than two severely disabled persons are charged 140 euros, less than one severely disabled person is charged 245 euros, and if no severely disabled persons are employed at all, the charge is 410 euros.

The levy is per unoccupied workplace and for each month.

Example:

A company with 200 employees must therefore fill 10 jobs (5 percent) with severely disabled persons. If the employer does not employ a single severely disabled person throughout the year, from 2024 onwards a compensatory levy of 720 euros per month will be due – for each job, i.e. a total of 86,400 euros (720 euros x 10 jobs x 12 months). In addition, contracts awarded to recognised workshops for the disabled can be credited against the compensatory levy by half of the invoice amount (excluding material costs).

12. Request for a clearance certificate

Brief summary: As planned in the 8th SGB Amendment Act, from January 1, 2024 health insurance companies will be able to request clearance certificates electronically via a payment system. Feedback is also provided electronically.

Depending on the circumstances, the health insurance companies can also return qualified or simple clearance certificates. There is a choice between a one-off request and a subscription. If a subscription already exists, it must be requested again electronically.

If a subscription is chosen, clearance certificates are provided at selected intervals (monthly, quarterly/semi-annually) until cancelled electronically without further electronic application by the client.

Note: The clearance certificate can also be requested in English.

Source: IWW Publishing House