

Information Sheet: Trainee lawyers' Social Insurance

Some private training entities pay additional remuneration to trainee lawyers (Rechtsreferendare) that are assigned to them during their law-firm section or their selective section. This additional remuneration is additional payment, which has to be credited to the regular remuneration paid according to § 65 (2) BBesG and is hence notifiable.

The "Deutsche Rentenversicherung Bund" (German statutory pension insurance scheme) considers such additional remuneration to be part of the payment based on the trainee lawyer's apprenticeship relation. This should apply if the payment is granted for an occupation which is not entirely independent from the trainee lawyer's training. If this opinion prevailed, the consequence would be that the amount of the additional remuneration would have to be included into the calculation of the total social insurance contribution.

This opinion is currently debated in a lawsuit at the Federal Social Court of Germany (B 12 R 1/13 R). The court of the first instance (Social Court of Hamburg) ruled on November 28th 2012 that the social insurance contribution has to include further additionally paid occupations (L 2 R 16 10). The reason for that is, that the additional remuneration is not granted for an occupation that is entirely independent from the trainee lawyer's training.

Therefore the Higher Regional Court of Schleswig only assigns trainee lawyers to training entities, if the competent representative of the training entity bindingly declares, that the State will be indemnified from any potential claim that might be brought forward by the social insurance agencies with regard to additional remuneration paid. This declaration is also necessary if no additional payment is granted.

The above mentioned does not apply to secondary employment, if the occupation is entirely independent from the trainee lawyer's training. In that case, the training entity is the exclusively responsible for the payment of social insurance contributions.

Trainee lawyers are obliged to notify the State of Schleswig-Holstein immediately if they are paid additional remunerations.