

Trainee lawyers' Social Insurance - Legal issues related to additional remuneration paid by private, foreign, supranational or intergovernmental training entities

Bulletin for trainee lawyers (Rechtsreferendare) and private, foreign, supranational or intergovernmental training entities

Some private training entities pay additional remuneration or fringe benefits to trainee lawyers (Rechtsreferendare) who are assigned to them during their law-firm section or selective section, which have to be credited to the regular remuneration paid according to § 65 (2) BBesG and are 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, if the remuneration is not granted for an occupation that is entirely independent of the trainee lawyer's training. This opinion is currently debated in a law suit at the Social Court of Hamburg. If this opinion prevailed, the consequence would be that the State of North Rhine-Westphalia, as the employer from a social insurance point of view, has to include the amount of the additional remuneration or the monetary value of the fringe benefits into the calculation of the total social insurance contribution that has to be paid, although the State of North Rhine-Westphalia would have no influence on the amount of the additional remuneration.

Because of this and because of the legal situation being unclear especially with regard to the risk of liabilities, the competent apprenticeship institutions in North Rhine-Westphalia only assign trainee lawyers to private training entities, if the competent representative of the private training entity bindingly declares, that the State of North Rhine-Westphalia will be indemnified from any potential claim that might be brought forward by the social insurance agencies with regard to additional remuneration or fringe benefits paid by the private training entity. The aforesaid also applies to foreign, supranational or intergovernmental training entities.

To avoid misunderstandings: This has nothing to do with the option of the trainee lawyer to work for private entities on a secondary employment basis independent of the apprenticeship objections, § 65 (1) BBesG. In this case, from the social point of view, the employer clearly is the private entity.

An official form of the declaration that is required for the assignment of a trainee lawyer can be downloaded from the web pages of the respective appellate courts (Oberlandesgerichte). On demand, the appellate courts will also send the form by mail or email.