

IMPULSE PAPER



Corporate continuing training: A challenge in the digitalised world of work

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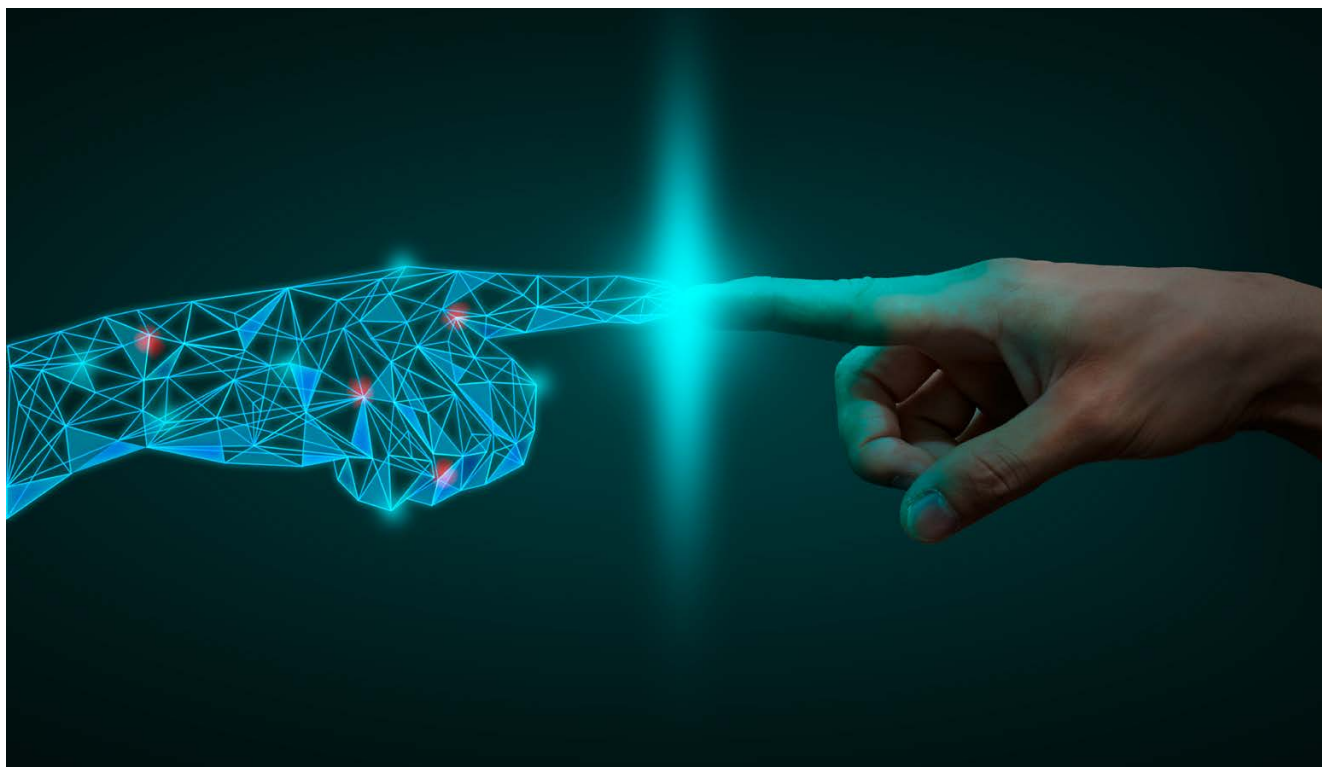
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1. Introduction

Digitalisation is accelerating and changing work processes in all corporate areas. The fast and dynamic nature of technological change is a challenge for companies and their employees alike. Demographic change and decarbonisation are also accelerating the transformation of domestic industry. In the coming years, Germany will have to respond to the massive challenges and requirements associated with the transformation process. As a result, the professional and personal skills that employees and executives need to have are also changing at a faster pace. Investment in initial and further training is required to meet the growing need for skills development and reduce the shortage of skilled labour. The changes in the coming years will affect a large number of employees. The concept of lifelong learning addresses this situation and is increasingly being incorporated into corporate strategies for personnel development and training, which are oriented towards the overarching corporate strategies and can therefore differ significantly in terms of their quality and overall number. Further training is key to the success of digitalisation at national and European level.

To implement lifelong learning, the existing work environment incorporating Industry 4.0 technology and digital networking should be used for further training and skills development.

Participation and co-design help to create transparency and trust and are crucial for success. Based on their expertise, employees will become important stakeholders in this process and this cooperative approach between the social partners and at operational level will ensure sustainability.

This joint publication of Working Group 4: Legal Framework and Working Group 5: Work, Education and Training deals with the legal framework for corporate continuing education and skills development in the digitalised world of work.



2. Legal framework – open questions

Vocational training in Germany is governed by various laws, including the Vocational Training Act, the Act on Opportunities to Gain Qualifications (Qualifizierungschancengesetz), the Works Constitution Act (Betriebsverfassungsgesetz, BetrVG) and the laws on continuous training in the individual federal states. In addition, the reorganisation of the Works Constitution Act in June 2021 strengthened the position of works councils in this area. It is also worth mentioning the Further Vocational Training Act (Aus- und Weiterbildungsförderungsgesetz) passed in 2023 which seeks to strengthen the promotion of initial and continuing training and supports companies in the transformation process, particularly through the provision of the new Skills Development Benefit (Qualifizierungsgeld), which can be paid as compensation for extended skills development measures of up to one year.

But is the existing legal framework sufficient to meet the need for continuing training or are changes and programmes needed for employees to be equipped for the demands of an increasingly digitalised working world? To answer this question, many issues need to be taken into account that require a thorough understanding of the existing legal framework in order to be able to assess the current policy environment and develop proposals for

solutions. The following list of questions is to provide food for thought, but is not exhaustive.

Continuing training – a right or an obligation?

Legal issues

Employees increasingly feel that the skills they have acquired in their initial education and training are no longer sufficient to be able to keep up with the demands of a digitalised working world. Conversely, employers are often confronted with employees who are reluctant to participate in skills development activities and further training measures.

There are no legal provisions or laws that contain the right or an obligation for employees to engage in further training. Sometimes provisions can be found in employment contracts and occasionally in collective agreements. Provisions on continuing training in employment contracts are often limited to rules stipulating whether the employer can preclude employees from terminating their employment for a certain period of time if the employer has financed continuing training measures.

1. Do employees have a legal right to (necessary) continuing training? If so, who decides whether continuing training is required and which kind of training?
2. Can the employee be obligated to take part in necessary continuing training? Is this (only) the case if the employee can no longer carry out their work effectively without such training or is this also the case if the employee needs to be trained for new, changed tasks?
3. Are employees entitled to a pay rise after completing continuing training measures in addition to collectively agreed pay increases, and if so, would this be limited to employees who take on additional or different duties?
4. In the case of continuing training, what options do employers have to contractually bind an employee to the company for a certain period of time if the company finances the continuing training (e.g. master craftsman training or part-time study)? What is the link between time and financial aspects here?

Current framework

Without any provisions in the employment contract or collective agreement, neither can the employee claim further vocational training nor can the employer obligate the employee to participate in vocational training measures. The only remedy in this situation is the right of termination. Anyone who is no longer able to meet the professional requirements associated with the digitalisation of their workplace may be dismissed for person-related or operational reasons if the skills required to carry out their duties are no longer sufficient or the current job ceases to exist and the employee does not have the sufficient skills to take on another/new job at the company. This solution is not expedient for either side because employers lose important human resources and may have to hire external applicants for new/changed duties and responsibilities at significantly higher costs while employees risk losing their livelihood.

Potential solutions

Employment contracts should be long-term agreements. It is therefore worth considering assigning the parties to the employment contract both an obligation and a right to further training. Statutory provisions should be limited to rules on what is necessary to maintain the respective employee's capabilities for working in existing or changed areas of work.

Insofar as this is taken into account by the parties to the employment contract at the time it is concluded, it can be included in the contract. For employment contracts that have already been concluded, the contract could be altered to this effect so as to allow for continuous corporate training to take place. On the other hand, dismissals with the option of altered conditions of employment are generally not suitable because they must be justified on social grounds.

Company co-determination

Legal issues

Vocational training is one of the key topics when it comes to co-determination in companies. This raises the question of how the rights of the works council and individual employees are designed and also how employers can or must act in the context of these changed legal framework conditions given the increased demands on the skills of employees.

1. What rights does the works council have when planning and carrying out continuing training measures? What is the scope of the works council's right of initiative here? How is it designed in detail?
2. What rights does the works council have when it comes to designing the content of continuing training courses and selecting employees for them?
3. What obligations do employers have towards the works council regarding the skills development/continuing training of employees?
4. What rights do employers have to implement necessary training measures?

Current framework

The co-determination rights of the works council are regulated in Art. 96 ff Works Constitution Act. The co-determination of the works council focuses on participation in the implementation of vocational training measures. The right of initiative regarding continuing vocational training lies with the companies. If the requirements of Section 96(2) Works Constitution Act are met, i.e. measures are planned that will lead to altered duties for the employees concerned or if their professional knowledge or skills are not sufficient for them to fulfil their tasks, the works council can demand that the company carry out appropriate corporate vocational training measures. The new option of appealing to the arbitration committee created by Section 96(1a) Works Constitution Act establishes the right of the works council to attempt to reconcile the parties. The arbitration committee has no decision-making authority.

Potential solutions

Employers and works councils have different opinions on the scope of co-determination rights. Employers continue to claim the right to define training requirements, whereas works councils would like to have greater scope for influence. Government incentives and financial assistance could help to present new opportunities that are taken up by employees and employers. Ultimately, the need for continuing training will vary among the various industries and companies. This suggests that a focused approach rather than generalised approaches is required.

Responsibility of the state and/or private-sector initiative

Legal issues

The state is responsible in many ways for ensuring vocational training for its citizens. It is universally recognised that there is a regular need for further training over the entire duration of employment. This is particularly true with regard to digital change for which older employees in particular are not adequately prepared. Is continuing vocational training in an existing employment relationship also the responsibility of the state or should it be left to the initiative of employees and employers?

1. Are citizens entitled to the funding of training measures?
2. If so, is the support limited to continuing training in the occupation or job the employee practices?
3. Do employees have to be released from work for publicly funded continuing training? Should the employee be released from work with or without remuneration?

Current framework

Vocational training programmes organised by the state are primarily designed to provide participants with a first professional qualification. In contrast, delivering continuing training in the practised profession is largely left to businesses. Larger companies can usually provide such training without difficulty, but smaller and medium-sized companies can be overburdened by this task. Advanced training schemes for employees are provided for in legislation such as the Act on Opportunities to Gain Qualifications (Qualifizierungschancengesetz) or in the continuing training laws of the individual federal states. State assistance for such training is often provided where persons are (at risk of becoming) unemployed. In addition, many employees continue their training on their own initiative by undertaking master craftsman training or undergoing technical specialisation, for example. Some of these training schemes receive funding from the state.

Potential solutions

Often employees cannot afford to take unpaid leave because they are dependent on earning a regular income to support themselves. For many households, receiving a benefit in lieu of income to match the amount of unemployment benefits would not be enough. Where employees need to be provided with continuing training for the purposes of company development, it seems justified for employers to grant them leave of absence with pay, as such training directly serves the interests of the company. In many companies, works agreements set out rules on in-company training or there are collective agreements that stipulate any extra payments to be made on top of wages or any contributions companies are to make to training course costs. There is always the option for the

social partners to come together to make existing and new collective agreements for skills development more attractive by having them provide employees with better financial security during their training programme. Where small and medium-sized companies in particular would be overburdened by having to pay the costs of training, direct training costs could be funded by the state either in part or in full. This can serve to increase acceptance for the provision of and participation in continuing training among employers and employees.

By contrast, asking employers to cover the costs of continuing training for which there is no direct need in the company seems difficult due to the time the employee would require off work and the need for them to continue to be paid during this time. Delivering training geared towards the demands of digital change is a general task to be mastered across society that justifies increased state support in the form of benefits. As funding for continuing training continues to be developed, general attention should be paid to ensuring that the overall funding framework is both transparent and well-organised. Care should be taken to ensure that this funding framework also allows for the necessary flexibility required. In addition, the funding period should also realistically allow for professional reorientation (e.g. by extending funding for part-time training).

Task of the social partners

Legal issues

The parties to collective agreements have long recognised that life-long learning is essential in order to keep companies competitive and thus to ensure job security. Confering a right and an obligation on employees to undertake further training in collective agreements always means costs. Collective agreements are binding for the parties to the employment contract, at least during collective bargaining coverage (i.e. for as long as the employers' association or employer is bound by their contract with the trade union). The extension of collective agreements to non-contracting parties or references to collective agreements in employment contracts may also result in additional obligations.

1. Should key responsibility for further training and continuing training lie with the social partners?
2. Does the topic of further and continuing training need to play an even greater role in the social partners' collective agreements?

3. What approach should be taken with companies that are not covered by collective agreements?

Current framework

In many sectors, there are already collective agreements on skills development within existing employment relationships. Examples include Section 5 Collective Agreement for the Public Service (Tarifvertrag für den öffentlichen Dienst, TVöD) for the public sector and the collective agreement on education for the metal and electrical industry. These collective agreements contain rules on the right of employees to professional training, the related need for release from work duties and cost issues. However, many companies are not bound by collective agreements for various reasons. The notion of negative freedom of association (the right not to be subject to a collective agreement) is protected by constitutional law (Art. 9(3) German Basic Law (Grundgesetz, GG)).

Potential solutions

When it comes to analysing the need to provide continuing training for the workforce, the social partners are far better able to make an accurate assessment than political players as they are much more familiar with their respective industries. They are therefore particularly qualified for developing tailored strategies for continuing training. Continuing training could be provided via (regional) continuing training associations. The parties to the collective agreement could create joint facilities for providing advanced professional training to employees. Ultimately, however, continuing training plans will also have to be designed around the needs of the individual company and its employees, not just the general needs of the respective sector. This will be particularly important when drawing up sectoral collective agreements. However, many companies refrain from collective agreements altogether. This can be seen in the IT sector in particular, where corporate structures are often not based on the usual models of co-determination and collective agreements. Consideration should therefore be given, for example, to whether further training systems could also be developed for companies that are not bound by collective agreements (potentially based on the sharing of costs between employers and employees). In other legal areas (e.g. the social partner model under the Act to Strengthen Occupational Pensions (Gesetz zur Verbesserung der betrieblichen Altersversorgung, BetrAVG)), there are already statutory requirements on this.



3. Examples from actual company practice

Joint training commission at Merck KGaA

Employees are continuously having to cope with different changes and adaptation processes at the workplace. In principle, all new training measures developed for German sites must be based on co-determination in accordance with Sections 96 – 98 Works Constitution Act. Because digitalisation creates new areas of expertise and a need for new training profiles, the social partners at Merck agreed to set up a training commission based on equal representation. It is made up of three members from the Works Council and the company respectively. The commission enables the Works Council and the company to come together to address issues such as the strategic direction of training measures part of further and continuing training at the company. It also gives employees the opportunity to request the training measures they need.

The training commission has adopted the following tasks in particular:

- Ensuring the provision of information and advice on the strategic direction of training measures at the company
- Providing advice on training measures and, if necessary, improving them

- Ensuring compliance with the criteria for selecting participants in the training programme(s)

The training commission meets three times a year for ordinary meetings and convenes additionally when necessary.

QUALIFIZIERUNG² – a training and skills development project between the social partners under the National Strategy for Continuing Training

Another approach being pursued by Merck to strengthen participation in continuing education is the introduction of continuing education mentors under the QUALIFIZIERUNG² project. This is a project between the Mining, Chemical and Energy Industrial Union IG BCE and the German Federation of Chemical Employers' Associations BAVC, which is funded by the Federal Ministry of Education and Research (BMBF) with scientific support from the Federal Institute for Vocational Education and Training (BIBB). In total, BMBF is funding the training and deployment of continuing education mentors in companies across four projects, which are being implemented by IG BCE and BAVC as well as by trade unions IG Metall, Ver.di and NGG. Scientific support ensures that the experience gained in the projects is tracked and can be transferred to other sectors and companies.

The deployment of continuing education mentors enables employees to receive individually tailored support and advice as equals and is a particularly promising way of reaching employees with negative experience in their training or those with little or no formal training. Through their direct contact with the workforce, continuing training mentors can identify opportunities for providing continuing training, develop tailored training measures and remove barriers to such training. The mentors also act as an important point of exchange for employees with the company's HR department and support the development of in-company training schemes. The advice provided by continuing

training mentors is easily accessible and is to be available quickly and without difficulty at the workplace as well. Mentors do not receive comprehensive training like professional training specialists do, but are provided with general instruction relevant to their role that can be deepened as required. The aim of their work is to increase the quantity and quality of in-company training and to raise participation levels among employees. In this way, the continuing training mentor projects help Germany to implement the goals set out in its National Continuing Training Strategy, such as providing tailored support for heterogeneous target groups and increasing participation in continuing education.



4. The general problematic

The provision of continuing training is an investment in companies' futures and in the professional resilience of employees. In order for employees to take advantage of it, employers need to ensure certain basic conditions: employees need to be given 1) time to undergo such training (e.g. through the facilitation of short-time work or the entitlement to leave of absence), 2) sufficient money or benefits that ensure their standard of living, even if they cut down to working part-time, and 3) good advice (e.g. through continuing training mentors) and attractive offers. For their part, the employees also need to be willing to participate in such training measures.

These conditions also need to be in place in particular in order to enable employees to undertake a second vocational training course or career reorientation. Companies employ a wide variety of instruments to ensure these conditions are provided.

It is a matter of debate as to whether a standardised legal framework is needed to strengthen continuing education activities in Germany. It is also unclear what kind of un-bureaucratic support is available for companies that are unable to finance continuing training for their employees or to build in time for this and/or that do not have a works council or a contact person for training in their HR department.



5. Outlook

The coalition agreement contains a large number of continuing training projects that address the labour market in its entirety as well as all employee groups. These include reforms of Social Code (Sozialgesetzbuch, SGB) II and III, grants under the Federal Educational Assistance Act (Bundesgesetz über individuelle Förderung der Ausbildung, BAföG) and under the Upgrading Training Assistance Act (Gesetz zur Förderung der beruflichen Aufstiegsfort-

bildung, AFBG), the introduction of a special ‘Lebenchance’ [life opportunities] grant under BAföG for self-determined continuing education, a (part-time) training period based on the Austrian model, a training and skills development allowance and the further development of transitional short-time work (Transfer-Kurzarbeit) which is designed to reduce staff numbers in a socially responsible manner.

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