



Translation help for: Merkblatt Nebentätigkeiten

Information sheet on ancillary employments

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I. Legal bases

The law for the ancillary employment of **civil servants** is specified in

1. the Civil Servant Act of Hesse (HBG), in Sub-Section 71 - 79,
2. the ordinance on the ancillary employment of civil servants in Hesse (NVO-) of 12 February 1965 (GVBl [Law and Official Gazette] I p. 41), in the amended version of 25 November 1998 of the HBG and NVO (GVBl I p. 492) (*Appendix 2*),
3. the University Code of the State of Hesse (HessHG) and the law on amending the TUD (TU Darmstadt) regulation and other legal regulations of 14 December 2009, as specified in Section 77 (*Appendix 3*),
4. the joint general decree of the Minister of Internal Affairs of 19 November 2008 (StAnz. no. 50/2008 p. 3191) on payment for use of personnel, facilities and material of the State of Hesse in connection with an ancillary employment (*Appendix 4*),
5. information on the Ancillary Employment Act for the Technische Universität Darmstadt (*Appendix 5*).

The law on ancillary employment for **employees** is ruled by Section 40 No. 2 in addition to Section 3 para. 4 TV-TU Darmstadt, subject to the requirement that prior notification of ancillary employment is to be made in writing and that otherwise the regulations on civil servants carrying out ancillary employment in accordance with the law must be met.

II. Explanations in more detail

1. Descriptions of terms - definitions

- 1.1. Ancillary employment is equivalent to a secondary function or second job.
- 1.2. A secondary function is a group of tasks not included in the primary function, which are performed on the basis of a public sector contract.
- 1.3. A second job is other work not included in the primary function within or outside the public sector.
- 1.4. A secondary function or second job is not the performance of additional tasks which are part of the group of tasks of the respective primary function in terms of content and can be re-defined as content of the primary function by extending the primary function. This is even true if, due to the assignment of these additional activities, all the tasks of the primary function have reached a volume which can no longer be handled within the usual working time. In such a case granting payment for additional work for civil servants and payment for additional work time for employees is considered.

Example: The working capacity of a research assistant is fulfilled 100 % with teaching and administrative tasks. A research project is also assigned to her/him.



- 1.5. Regarding contracts from third parties, e. g. in research contracts the same task may be an ancillary employment or an official function attributable to the primary function.

An official task means that the client requests a service from the University (TUD) or from one of its institutes which is duly performed on behalf of the TU or the institute, using its letterhead, and for which the State assumes liability. The President reserves the right to enter into any corresponding research contracts. Remuneration of the project leader or employees is excluded in such cases.

A second job means that the client requests the personal services of a specific member of the TUD, which are only delivered on behalf of the respective individual, using her/his (private) letterhead and for which this individual assumes sole liability.

- 1.6. If a member of the TUD is permitted to use employees in the performance of the ancillary employment in accordance with Section 75 HBG, this is not an ancillary employment for the respective employees. This also applies if the additional work resulting from this can no longer be done within normal work time. (Financial consequences: the member of the TUD performing the ancillary employment has to pay the TUD for this use, employees may receive payment for additional work time if the requirements of the collective wage agreements are met (they are paid for overtime).
- 1.7. On the other hand, members of the university may involve other members in completing tasks associated with the ancillary employment. In such cases participating in an ancillary employment is also an ancillary employment. (Financial consequences: together with the client employees agree on payment which the client pays from her/his own funds and not from TUD funds and then requests approval for an ancillary employment of their own).

Examples:

A secretary performs paperwork required in connection with an ancillary employment outside normal work time, a technician takes measurements outside normal work time, a research assistant contributes to a report outside normal work time.

In all the preceding cases approval for an ancillary employment is required, if applicable, use is also to be paid (see below).

- 1.8. Contracts for work/contracts for employment:
Commissioning employees in connection with contracts for work or services is usually excluded. An exception can only be made if the work to be performed cannot be assigned on the basis of the employer's right to issue instructions to employees. In such cases the employee **must**, however, obtain approval for an ancillary employment from the Human Resources department (Personaldezernat).



2. Ancillary employments subject to approval and not subject to approval

A distinction must be made between ancillary employments

2.1 subject to approval and

2.2 not subject to approval (subject to notification).

For any of these ancillary employments the attached request or notification form is to be used. For any ancillary employments the expected payment and the payments in kind must be stated.

2.1. Ancillary employments subject to approval (Section 73 HBG)

- 2.1.1. Section 73 of the HBG contains lists of all kinds of ancillary employments subject to approval. See also the Information on the Ancillary Employment Act for the Technische Universität Darmstadt (*Appendix 5*)
- 2.1.2. General exception:
Secondary jobs taking place outside work time are deemed to be generally approved, if payment from one or several ancillary employments does not exceed €1,227.10 per year in total (so-called ancillary employment of limited scope). However, such secondary jobs are subject to notification (cf. Section 5 NVO (regulation on ancillary employment of civil servants), see *Appendix 2*).
- 2.1.3. Procedure:
The request for approval of an ancillary employment must be submitted to the university management via the Head of Faculty using the attached form in good time before the job is due to start. In this process the evidence required, particularly regarding the type and extent of the work and the resulting payment and payments in kind must be provided. If no detailed statements can be made at the time of the request, approximate information must be provided and the details given later. Notification about any changes must be made immediately, unasked and in writing

These provisions also apply to employees with the restriction that notification must be made, using the above-mentioned form.

Payment is any remuneration in the form of money or payment in kind. Reimbursement of cash expenses and travel costs as well as payment of daily and overnight allowances, which do not exceed the authorised rates for civil servants, are not considered remuneration.



2.2. Ancillary employments not subject to approval (Section 74 HBG)

2.2.1. Section 74 of the HBG contains a list of ancillary employments not subject to approval (see Appendix 5).

2.2.2. Ancillary employments not subject to approval include in particular:

- a civil servant's work in writing literary, scientific or artistic texts or giving lectures in these disciplines
- teaching and further training employees in the public sector and
- ancillary employments of limited scope, i. e. which are performed outside work time in accordance with Section 5 NVO, for which approval cannot be refused on legal grounds and payment amounts to no more than €1,227.10 per year,
- the independent production of reports in connection with teaching or research by professors and university teachers at the universities in the State of Hesse and civil servants of other research institutes and faculties for payment or payment in kind.

2.2.3. Procedure:

In each case notification of the work must be given in writing before it starts, in particular, details as to the **type** and **extent** of the ancillary employment and the expected **payment** and **payment in kind** in accordance with Section 74 para. 1 No. 1 and 2 HBG, using the attached form. In individual cases notification as specified in Section 74, para. 1, No. 1 can be obligatory for one year at the most.

This information must include details on the type and extent of the work as well as on payment (see clause 2.1.4). If no details can be given at the time of the notification, approximate information must be provided and details given later. Notification about any change must be made immediately, unasked and in writing.

3. Requirements for approving ancillary employments or carrying out these employments (Section 73 paras. 2 and Section 75 paras. 1 HBG)

Approval or performance definitely requires that

- the ancillary employment does not constitute carrying out a **second profession** because it is professional work or services or work of any other type, volume or frequency according to the law on professional employee assignment,
- the time used for one or several ancillary employments does not exceed **one fifth of the normal working hours** per week,
- the payments and payments in kind resulting from ancillary employments subject to approval do not exceed **30 per cent of the annual income** for permanent employment in the calendar year, or higher payments or payments in kind have been officially authorised after checking possible reasons for refusal on legal grounds in the records, with the result that professional interests are not affected by the ancillary employment.

A reason for refusal on legal grounds also exists, if the evidence required for the decision has not been submitted.

4. Requirements for permitting ancillary employments not subject to approval

In accordance with Section 74, para. 4 HBG an ancillary employment not subject to approval must be prohibited in whole or in part, if the civil servants neglect their professional duties when performing the ancillary employment. A reason for refusal may also exist, if the time used for one or several ancillary employments exceeds one fifth of the normal work time per week or the payments or payments in kind resulting from the ancillary employment exceed 30 per cent of the annual income in the calendar year or, in the case of higher payments or payments in kind, it has been shown that professional interests have been affected by the ancillary employment after specifically checking possible reasons for refusal on legal grounds.

5. Payment for use

In accordance with Section 77 HessHG (University Code of the State of Hesse) (*Appendix 3*) an appropriate payment for use is to be made to the University, if personnel, material or facilities of the University were used to carry out the ancillary employment for payment.

In accordance with Section 75 HBG (Civil Servant Act of Hesse) facilities, personnel and material belonging to the employer may only be used to carry out ancillary employments with the employer's consent. This consent must be given **beforehand**.

Regarding the amount of the payment for use, the fixed prices as specified in the joint general decree of the Minister of Internal Affairs of 19 November 2008 (*Appendix 4*) are applicable.

The payment for use is to be charged **subject to VAT**, if no tax exemption applies in a specific case.

To calculate the payment, **records** must be kept in order to prove the extent of the use (for more details please refer to *Appendix 4*). Payment for use is usually settled every three or six months, in annual settlements appropriate part-payments should be made.

The income resulting from payments for use is retained by the University. It belongs to the institute/faculty of the university teacher who makes the payment for use where it can therefore be used to boost the **funds** of the faculties.