Information sheet on secondary employment

I. Legal basis

The law governing secondary employment for **civil servants** is regulated in

- the Hessian Civil Service Act (HBG), specifically in Sections 71 to 79.
- the Regulation on Secondary Employment of Hessian Civil Servants (Hessian Secondary Employment Regulation – HNV) of 31 May 2015 (GVBl I p. 234)
- the Hessian Higher Education Act (HessHG) and the Act Amending the TUD Act and other legal provisions of 14 December 2009, namely in Section 70 HessHG
- the Joint Circular of the Ministry of the Interior and Sport dated 11 December 2018 (StAnz. No. 52/2018 p. 1541) on usage fees for the use of personnel, facilities and materials of the state for the purpose of secondary employment
- the information sheet on engaging in secondary employment issued by the Hessian Ministry of the Interior and Sport

The right of **employees** to engage in secondary employment is regulated in Section 40 No. 2 of Section 3 (4) of the TV-TU Darmstadt collective agreement, with the proviso that secondary employment must be notified in writing in good time in advance and that, in all other respects, the provisions applicable to civil servants with regard to the lawful exercise of secondary employment apply.

II. Further explanations

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1. Definition - Delimitation

1.1. A secondary activity is the performance of a secondary office or the pursuit of a secondary occupation.

1.2. A secondary occupation is a set of tasks that does not belong to the main occupation and is performed on the basis of a public-law service or official relationship.

1.3. A secondary occupation is any other activity not belonging to a main occupation within or outside the public service.

1.4. The performance of additional tasks which, in terms of their content, belong to the scope of the respective main position and can be made part of the main position by expanding the main position does not constitute a secondary position or secondary employment. This also applies if, as a result of the transfer of these additional tasks, the total tasks of the main position take on a scope that can no longer be managed within regular working hours. In this case, civil servants may be entitled to overtime pay and employees may be entitled to overtime compensation.

Example: A research assistant is working full-time on teaching and administrative tasks. She is additionally assigned to work on a research project.

1.5. In the case of third-party contracts, e.g. research contracts, one and the same task may constitute a secondary occupation or a duty attributable to the main occupation.

A service task is when the client requests a service from the university (TUD) or one of its institutes, which is then provided in the name and on the letterhead of the TU or the institute, and for which the state is liable in the event of liability. The conclusion of corresponding research contracts is reserved for the president. In such cases, fee payments to project managers or employees are excluded.

A secondary occupation is when the client requests the personal services of a specific member of TUD, which are then provided solely under the name of the person concerned and using their (private) letterhead, and for which the person concerned is also personally liable.

1.6. If a member of TUD is permitted under Section 75 HBG to engage employees in secondary employment, this does not constitute secondary employment for the employees concerned. This also applies if the additional work resulting from this can no longer be completed within regular working hours. (Financial impact: The TUD member performing the secondary employment must pay a fee for its use; employees may receive overtime pay if the conditions specified in the collective agreement are met).

1.7. On the other hand, members of the university may involve other members in the performance of secondary employment tasks. In such cases, participation in a secondary employment task also constitutes secondary employment. (Financial impact: employees agree on remuneration with the contractor, who pays this from their own funds and not from budgetary funds, and **then apply for their own secondary employment permit**).

Example:
A secretary completes the paperwork associated with a secondary job outside of regular working hours; a technician takes measurements outside of regular working hours; a research assistant works on an expert opinion outside of regular working hours.
with.

In all these cases, it is necessary to obtain a permit for secondary employment and, if applicable, to pay a usage fee may also be payable (see below).

1.8. Contracts for work / service contracts:
As a rule, employees may not be commissioned under work or service contracts. An exception is only possible if the work to be performed cannot be assigned by virtue of managerial authority. In such cases, however, the employee must obtain permission for secondary employment from the Human Resources Department.

2. Secondary activities requiring approval and those not requiring approval

A distinction must be made between

2.1. secondary activities requiring approval and
2.2. secondary activities that are not subject to approval (subject to notification).

The enclosed application or notification form must be used for all these secondary activities. The expected remuneration and monetary benefits must be stated for all secondary activities.

2.1. Secondary employment requiring approval (Section 73 HBG)

2.1.1. Section 73 HBG lists all secondary activities that require approval. See the Information on secondary employment law for Darmstadt Technical University.

2.1.2. General exception:
Secondary employment outside of working hours is generally permitted, provided that the remuneration from one or more secondary jobs does not exceed €1,230 per year (so-called minor secondary employment). However, such secondary employment must also be reported (see Section 7 Hess.
Secondary Employment Regulation).

2.1.3. Procedure:
The application for approval of secondary employment must be submitted in good time before the intended commencement of employment using the enclosed form via the departmental management of the university management. The **evidence necessary** for the decision must be provided, in particular regarding **the nature** and **scope** of the activity as well as the **remuneration** and **monetary benefits** derived from it. If specific details cannot be provided at the time of application, approximate details must be provided and specified at a later date. Any changes must be reported in writing immediately and without request.

These regulations apply to employees accordingly, with the restriction that they must be reported using the above-mentioned form.

Remuneration is any consideration in cash or monetary benefits. Reimbursement of cash expenses and travel costs, as well as the payment of daily allowances and accommodation allowances that do not exceed the rates applicable to civil servants, are not considered consideration.

2.2. **Secondary activities not subject to approval** (Section 74 HBG)

2.2.1. Section 74 HBG lists those secondary activities that are not subject to approval.

2.2.2. Secondary activities that do not require approval include, in particular:

- writing, scientific, artistic or lecturing activities by civil servants,
- Providing training and further education for persons working in the public sector and
- Minor secondary activities, i.e. those carried out outside working hours in accordance with Section 7 HNV, which do not constitute grounds for refusal under the law and for which the total remuneration does not exceed EUR 1,230 per annum.
- the independent expert activities of professors and university lecturers at universities in the state and civil servants at other scientific institutes and establishments in connection with teaching or research tasks in return for remuneration or monetary benefits

2.2.3. Procedure:
Activities pursuant to Section 74 (1) Nos. 1 and 2 HBG must be reviewed in each individual case prior to commencement under
Notification, in particular of **the type** and **scope** of the secondary employment and the expected amount of **remuneration** and **monetary benefits** arising therefrom, must be made in writing or electronically using the enclosed form. In individual cases, a general notification obligation may be permitted for a maximum of one year in cases covered by Section 74(1) No. 1.
The notification must contain details of the nature and scope of the activity and the amount of remuneration (see point 2.1.4). If specific details cannot be provided at the time of notification, approximate details must be provided and specified at a later date. Any changes must be notified in writing immediately and without request.

3. Requirements for the approval of secondary employment or the pursuit of such secondary employment (Section 73 (2) and Section 75 (1) HBG)

Approval or pursuit of such activities is generally subject to the following conditions

- the secondary activity does not constitute the pursuit of a **second occupation** due to commercial services or work or otherwise due to its nature, scope or frequency,
- the time spent on one or more secondary activities does not exceed eight hours per week,
- the remuneration and monetary benefits from secondary employment subject to approval do not exceed **30% of the annual salary** for full-time employment in the calendar year, or, in the case of higher remuneration and monetary benefits, it is established on the basis of a special examination of the grounds for refusal that the secondary employment does not impair official interests.

A reason for refusal also exists if the evidence required for the decision is not provided.

4. Requirements for the admissibility of secondary activities not subject to authorisation

According to Section 74(4) of the Higher Education Act (HBG), secondary employment that is not subject to approval must be prohibited in whole or in part if
if the civil servant violates official duties in the course of their work. A reason for refusal may also exist if the time spent on one or more secondary activities exceeds 8 hours per week or if the remuneration and monetary benefits from secondary activities subject to approval exceed 30% of the annual salary for full-time employment in the calendar year of the annual remuneration for full-time employment, or if, in the case of higher remuneration and monetary benefits, a special examination of the grounds for refusal determines that the secondary employment impairs official interests.

5. Usage fee

According to Section 70 of the HessHG, an appropriate usage fee must be paid to the university if personnel, material resources or facilities of the university are used in the course of performing secondary employment in return for remuneration.

According to Section 75 of the HBG, the employer's facilities, personnel and materials may only be used for secondary employment with the employer's permission. Permission must be obtained **in advance**.

With regard to the amount of the usage fee, the flat rates specified in the joint circular issued by the Ministry of the Interior and Sport on 11 December 2018 apply.

The usage fee is subject to **value added tax** unless there is a specific case of tax exemption.
tax exemption applies.

Records must be kept to determine the fee, showing the extent of usage. The usage fee is usually billed quarterly or half-yearly; in the case of annual billing, appropriate advance payments must be made.

The income from the usage fees remains with the university. It belongs to the institute/department of the university lecturer who pays the usage fee. It can therefore be used to **increase the funding available** to the departments.