

If you are not a German citizen you can ask your employer to be provided with this information sheet and the written conditions of employment in your native language.

This leaflet contains the main contents of the Temporary Employment Act (AÜG) and reflects the legal opinion of the Federal Employment Agency. The following statements cannot replace legal advice in individual cases.

Information leaflet for temporary workers

You are considered to be a temporary worker if your employer (agency) assigns you to provide work for a third party (hirer). You are considered to be assigned to a hirer if you are incorporated into this hirer's work organisation and are subject to its directions.

If you are not a German citizen, you have the right to request that the agency provide you with this information leaflet and with records of the essential contract terms (see no. A) in your native language.

For updated versions of this information leaflet, please go to www.arbeitsagentur.de > Unternehmen > Downloads.

A. Employment relationship

1. Your employer (agency) must hold a license as a temporary-work agency issued by the *Bundesagentur für Arbeit*. Your employment contract would be invalid should your employer not hold this license, unless certain exemptions from the licencing obligation apply. In such cases, an employment relationship will be deemed to have been concluded between yourself and the hirer. You have the option of maintaining the employment relationship with your employer. For this purpose, you will have to notify the agency or the hirer in writing within one month that you intend to maintain the employment relationship with the agency (so-called "maintaining notification" "*Festhaltungserklärung*"). In this context, please note the following: You are obligated to first personally present your written notification to an *Agentur für Arbeit* office, have your identity confirmed there, and have this fact stated on your letter. Following this, you have to present this notification to your employer or the hirer within 3 days. The maintaining notification will not make the unlawful assignment lawful, neither with effect for the past nor for the future. The assignment must be terminated immediately.

If a licence had originally existed and ceases to apply during the ongoing employment relationship, the agency is obligated to promptly

inform you thereof. The agency must inform you of the projected end of the phase-out period. The maximum deadline for the phasing-out of the contract is 12 months. The phase-out period is the maximum period which the agency is granted to fulfil any contracts already concluded with the hirer.

Your employer may only assign you to a hirer if an employment contract exists between yourself and the employer. The employer must inform you prior to any assignment to a hirer that you will be working as a temporary worker.

The record of the essential contractual terms of the temporary employment relationship are governed by section 11 (1) of the Temporary Employment Act (*Gesetz zur Regelung der gewerbsmäßigen Arbeitnehmerüberlassung – AÜG*), and the provisions of the Act on Documents of Proof of the Essential Conditions Applicable to an Employment Relationship (*Nachweisgesetz – NachwG*). The agency (employer) is obligated to record the essential conditions and contents of the temporary employment relationship in a written document, to sign it, and to provide you with this document, no later than one month from the date of commencement of the employment relationship. This written record must as a minimum include the following information:

- your name and address, as well the agency's name and address,
- date of commencement of the employment relationship,
- for fixed-term employment contracts: the projected duration of the employment relationship,
- the place of work or, if you are intended to not work at merely one defined place of work, the note that you may be deployed at different locations,
- a brief description of your work,
- the composition, sum and due date of the salary including surcharges, allowances, premiums and special payments as well as any other salary components,
- the agreed weekly and/or monthly working hours,
- the number of days of holiday entitlements,
- the periods of notice for a termination of the employment contract for either party,
- a reference in a general form to any collective agreements, shop agreements or service agreements applicable to the employment relationship,
- the name of the licensing authority as well as the place and date of issue of the licence pursuant to section 1 AÜG,

- the type and amount of benefits for times during which you are not assigned to a hirer.

An assignment to one hirer is generally only permitted for a maximum period of 18 months¹. In order for your employer not to exceed the maximum period of assignment, the employer must also fully take into account your previous assignments with the same hirer, including those processed via other agencies, if the period between two assignments is no more than 3 months. Deviations from the maximum assignment period of 18 months are possible through collective agreements in the industry of employment – within the scope of application of such collective agreements – or through a shop agreement or service agreement of the hirer with whom you are deployed. If the maximum assignment period is exceeded, the employment relationship with your employer is invalid, and an employment contract is established between you and the hirer. You have the option of maintaining your employment relationship with your employer (agency). For this purpose, you have to make the maintaining notification described in section A.1. above.

The contract concluded between your employer and the hirer must expressly be referred to as an agreement on temporary agency work (so-called disclosure, “*Offenlegung*”). Additionally, your employer and the hirer must specifically name you prior to your deployment, in the temporary agency contract or by making reference to this contract (so-called specification, “*Konkretisierung*”). Any failure to meet these obligations will affect your employment relationship. In such cases, the employment relationship with your employer is invalid, and an employment relationship between you and the hirer is established. In this case, you again have the option of maintaining your employment relationship with your employer (agency). For this purpose, you have to make the maintaining notification described in section A.1. above.

In principle, you are entitled to reimbursement of expenses (e.g. travel and accommodation costs) if you are deployed at a location other than the place of employment. For instance, you must be reimbursed for travel costs between the agency's place of business and the hirer's place of business.²

However, deviating regulations may be provided for in collective agreements or in your individual employment contract. Whether and, if applicable, to what extent such expenses can be reimbursed by the tax office, depends on the provisions of tax law applicable in each individual case.

The participation rights of employees' representation bodies (works council, personnel board) under the Works Constitution Act (*Betriebsverfassungsgesetz*) and the Federal Act Regulating Personnel Representation Boards (*Bundespersönalvertretungsgesetz*) must also be complied with by agencies and their employees.

The agency does not have the right to prevent you from concluding an employment contract with the hirer after the termination or expiry of your temporary employment relationship. A prohibition such as this in your agreement with the agency or in the agreement between the agency and the hirer is invalid.

The agency is obligated to pay you the agreed salary even if it is unable to assign you to a hirer.

You are not obligated to work for a hirer who is being affected directly by industrial action. In case of such industrial action, the agency must inform you of your right to refuse performance and to not work for this hirer. The hirer is not permitted to have you work in its facility if this facility is affected directly by industrial action. In exceptional cases, your deployment with a facility where the workers are on strike is permitted if the hirer ensures that you are not being deployed to break a strike.

B. Principle of equal treatment

During the time of deployment with the hirer and from the first day of such deployment, you in principle have the right to the essential terms of work (such as working hours, holiday entitlements), including the salary, applicable to a similar employee working at the hirer's business establishment (principle of equal treatment)³. You are entitled to request that your hirer provide you with information on the essential terms of work and the applicable salary.

Deviations from this principle of equality are only permitted in the following case: If your temporary employment contract is governed by a collective agreement which regulates the essential terms of work. A collective agreement such as this will on the one hand be applicable if a trade union and an employers' association have concluded a collective agreement and if you are a member of this trade union and your employer is a member of this employers' association. On the other hand, the employment contract between yourself and the agency may provide for the application of a specific collective agreement.

Payment of a lower salary due to or based on a collective agreement for temporary work is only

¹ For the calculation of this period, only assignment times after 01 April 2017 are relevant.

² See section 670 of the Civil Code (*Bürgerliches Gesetzbuch* – BGB)

³ See section 8 (1) AÜG

permitted during the first 9 months⁴ of assignment to one hirer. Your employer must fully take into consideration your previous deployment with the relevant hirer – including assignments for other agencies – if the period between such assignments is no more than 3 months. It is permissible to pay you a salary below the salary of a similar employee in the hirer's undertaking for more than 9 months if an equivalent salary is set out in an applicable collective agreement, and if this collective agreement provides for you to reach this salary by means of an increase in stages no later than after the 15th month of deployment. The increase of the salary in stages must commence after 6 weeks of deployment at the latest.

The situation is different if you are deployed with a hirer with whom you had a prior employment relationship during the last six months prior to the agency deploying you with such hirer, whether on a temporary or permanent basis (so-called "revolving door clause"). This also applies to hirers who are affiliated in a corporate group with your prior employer. In such cases, you have a right to the same terms of employment, including the salary paid, as a similar employee in the hirer's undertaking, whereby this right applies from the beginning.

C. Minimum wage limit and minimum wage in the industry

The Federal Ministry of Labour and Social Affairs (BMAS), upon a recommendation by the collective bargaining parties, passed the Third Decree on a Minimum Wage for Temporary Workers (LohnUGAÜV 3). The minimum hourly salaries set out by the BMAS in the LohnUGAÜV 3 take precedence over the statutory minimum wage. This means that your employer is obligated to pay you as a minimum the minimum hourly salary set out in the LohnUGAÜV 3. The same applies to any successor decrees of the LohnUGAÜV 3. If no decree on a minimum wage exists for the temporary work, the requirements of the Minimum Wage Act (*Mindestlohngesetz*)⁵ apply instead. In this event, the employer is obligated to pay you as a minimum salary the general statutory minimum wage applicable at that time.

Under the LohnUGAÜV 3, the agency is obligated to pay you as a minimum the following gross salary per hour of work (minimum hourly salary):

1. in the German Federal States of Berlin, Brandenburg, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt and Thuringia

a) between 01 June 2017 and 31 March 2018
8.91 Euro

b) between 01 April 2018 and 31 December 2018
9.27 Euro

c) between 01 January 2019 and 30 September 2019
9.49 Euro

d) between 01 October 2019 and 31 December 2019
9.66 Euro,

2. in all other German Federal States

a) between 01 June 2017 and 31 March 2018
9.23 Euro

b) between 01 April 2018 and 31 March 2019
9.49 Euro

c) between 01 April 2019 and 30 September 2019
9.79 Euro

d) between 01 October 2019 and 31 December 2019
9.96 Euro.

The minimum wage applicable at your place of work has to be paid to you. If you work at a location other than the place of your employment, and if the wage at your place of employment is higher than at your place of work, you are entitled to this higher minimum hourly salary.

You are entitled to request that the minimum hourly salary be paid no later than on the 15th bank working day (the place of reference is Frankfurt am Main, Germany) of the month following the month for which the minimum hourly salary has to be paid.

This provision does not apply to hours going beyond the regular monthly working hours, provided that there is a provision in a collective agreement on the flexibility of working time through flex-time accounts. This flex-time account must not show more than 200 credit hours, in the event of seasonal fluctuations up to 230 credit hours in individual cases. If your flex-time account shows more than 150 credit hours, your agency has to safeguard the credit hours which go beyond the number of 150 hours, including the social security contributions attributable to them, against insolvency, and must provide you with proof of this insolvency insurance. If this proof is not provided, your flex-time account must not show more than a maximum of 150 credit hours.

⁴ Only assignment times after 1 April 2017 are decisive for the calculation of this period.

⁵ For information on the current versions of the existing decrees on minimum hourly salaries, please go to <https://www.bmas.de>.

If your contractual working time is less than 35 hours per week, the maximum limit of the flex-time accounts shall be adjusted accordingly.

Upon your request, hours from the flex-time account which go beyond a number of 105 credit hours shall be paid out to you. For part-time employees, the number of credit hours shall be determined on a pro rata basis in relation to the working time agreed in the relevant employment contract.

The claim to minimum wage is subject to special protection. It cannot be made subject to so-called exclusion or forfeiture deadlines agreed in individual or collective agreements if such agreements provide for the forfeiture of claims from the employment relationship should the claim not be asserted prior to expiry of a specific deadline (e.g. 3 months). In such cases, the employer cannot refuse payment of remuneration in the amount of the minimum wage by invoking expiry of the exclusion or forfeiture deadline. Agreements on exclusion or forfeiture periods in individual contracts may be ineffective as a whole due to a violation of the transparency principle according to section 307 (1) 2 of the Civil Code (BGB) if they do not provide for an exemption for the claim to the minimum wage. In such cases, the employer cannot invoke the exclusion or forfeiture period, also with regard to any salary claims based on the individual contract that go beyond the minimum wage.

If, during your deployment with the hirer, you provide work (e.g. as an industrial building cleaner, painter and varnisher, maintenance worker) for which a deviating industry-specific minimum wage currently applies on the basis of the Act on the Posting of Workers (AEntG), you have a claim under section 8 (3) AEntG to payment of the minimum wage set out there for the period of your deployment. For an overview of the minimum salaries within the meaning of the AEntG, please go to the following link: https://www.bmas.de/Shared-Docs/Downloads/DE/mindestloehne-gesamtuebersicht.pdf?__blob=publicationFile&v=9.

D. Social security

The agency as your employer is obligated to pay the social security contributions, just as any other employer. Should the agency not comply with this obligation, the hirer will be liable in each individual case⁶.

E. Occupational safety and accident prevention

Your work for the hirer is governed by the public law provisions of occupational safety applicable to the hirer's business facility. The agency and the hirer are responsible for compliance with these provisions. The hirer furthermore must take the accident prevention measures required by statutory

provisions. You are obligated to comply with the corresponding rules.

The hirer furthermore must inform you, in particular prior to commencement of work and in case of changes in its field of work, of the following:

Any safety and health risks to which you may be exposed during your work, as well as of the measures and equipment for the prevention of such risks and for the protection against such risks, including prevention measures in the area of occupational medicine, the necessity of specific qualifications or professional skills, any specific risks connected with the place of work as well as the measures taken or to be taken.

F. Your obligation to report in good time that you are seeking employment⁷

When your employment contract with the agency ends, you are obligated to personally notify your *Arbeitsagentur* that you are seeking employment, no later than three months prior to the end of your employment relationship. Should the period between the date on which you obtain knowledge of the date of termination and the end of the employment relationship be less than three months, you are obligated to make this notification within three days from the date on which you obtain knowledge of the termination date.

In order to comply with the statutory notification period, it is sufficient that you notify the *Arbeitsagentur* within this timeframe, e.g. online (<http://www.arbeitsagentur.de>) or by telephone, of the termination of your employment relationship, and make an appointment for the personal notification that you are seeking employment.

You have only fully complied with your obligation to report that you are seeking employment once you have kept the appointment with the *Agentur für Arbeit*.

Please note that a freeze period of one week may apply should you not report in good time. A freeze period means that the claim for payment of unemployment benefit (*Arbeitslosengeld*), even though this claim exists, would be suspended, and that you would not be paid unemployment benefit for this week of suspension.

G. Hirer's obligation to provide information on vacancies

The hirer must inform you of any vacancies which are to be filled in the hirer's company. This may be done via a notice board at a location on the hirer's premises to which you have access.

⁶ See section 28e (2) of Book IV of the Social Security Code (SGB IV)

⁷ See section 38 (1) SGB III

H. Access to communal facilities or communal services

The hirer must grant you access to the communal facilities or services of its company – such as childcare facilities, community catering and transport –, subject to the same conditions as those offered to similar employees at the hirer's company. However, there may be reasons which justify unequal treatment. Such a reason may be if you only work for the hirer for a brief period of time and if it would lead to unreasonably high administrative expenses for the hirer if you were granted access to communal facilities and services.

I. Who can help in the event of disputes or queries?

Any disputes arising from the employment relationship between yourself and the agency (employer) will be decided by the labour courts (*Arbeitsgericht*). Further information in this context will be provided by trade unions and employers' associations, lawyers and the offices of the *Bundesagentur für Arbeit* in Düsseldorf, Kiel and Nuremberg who are responsible for supervising the agencies.

Should you be in doubt as to whether your agency holds the required licence issued by the *Bundesagentur für Arbeit*, please contact the relevant team for temporary employment at the *Agentur für Arbeit* in Düsseldorf, Nürnberg or Kiel. These teams, and any other *Agentur für Arbeit*, also receive, deal with and investigate notifications on legal violations by licence holders.

Contact details of the three teams responsible for temporary workers (*Team Arbeitnehmerüberlassung*):

- Agentur für Arbeit Düsseldorf, 40180 Düsseldorf (phone: 0211 692 4500);
- Agentur für Arbeit Kiel, 24131 Kiel (phone: 0431 709 1010);
- Agentur für Arbeit Nürnberg, 90300 Nürnberg (phone: 0911 529 4343).

Each team for temporary workers is responsible for licence holders from several federal states. The team at the *Agentur für Arbeit* in Düsseldorf is responsible for the federal states of North Rhine-Westphalia and Hesse. The team at the *Agentur für Arbeit* in Nürnberg is responsible for the federal states of Bavaria, Baden-Wuerttemberg, Rhineland-Palatinate and Saarland. The team at the *Agentur für Arbeit* in Kiel is responsible for all other federal states.