

# GERMANY

Updated: 24-04-2009

## I. Important legal notice

This data sheet aims to give a general summary of the main provisions of substantive law applicable to terms of employment in the transposition of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18 of 21.1.1997). By its very design, such a data sheet can be no more than a summary, which of necessity does not contain all relevant elements. It can in no way be construed as replacing the comprehensive legal and administrative regulations, or the applicable collective agreements. The information below has been provided by the authorities of the Member States, which have made efforts to make them as accurate as possible. Notwithstanding this, neither the Commission nor the relevant Member States are able to guarantee that this information is always detailed, complete, accurate and current. Furthermore, its publication on the European Commission website in no way means that the Commission or its agencies assume that the provisions set out this way are in accordance with Community legislation.

## II. Legal provisions for the transposition of Directive 96/71/EC

The law on obligatory working conditions for trans-border provision of services (Worker Posting Law, or AEntG) of 20 April 2009.

Official publication:

BGBI. 2009 Teil I S. 799

[Arbeitnehmer-Entsendegesetz](#)

## III. Information regarding the legal norms applicable to the Directive

Information on legal norms applicable to enterprises that second employees to the territory of another Member State for a particular period is available from the following address:

Enterprises posting workers to German territory for a certain period can obtain information on the current legal situation at the liaison office (Financial Control for Illegal Employment at the Cologne Regional Revenue Office). Details about the contact office are already included on the Commission's home page: <http://ec.europa.eu/social/main.jsp?catId=726&langId=de>

Information is also available from:

Information on the Holiday Fund for the German construction industry is available from

Urlaubs- und Lohnausgleichkasse der Bauwirtschaft

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#### **IV. Cases of non-observance of terms of employment**

Cases of the non-observance of the applicable terms of employment in Germany, and cases of suspected illegal trans-border activities can be reported to the national contact office:

<http://ec.europa.eu/social/main.jsp?catId=726&langId=de>

#### **V. Existing of a posting [Article 1 of the Directive]**

The Worker Posting Law applies to enterprises that carry out one of the following transnational measures:

Employing a worker in Germany

#### **VI. Posted workers [Article 2 of the Directive]**

Directive 96/71/EC applies to workers who for a limited period carry out their work in the territory of a member state other than the member state in which they normally work.

In Germany a worker is defined as anyone who provides dependent work in the service of another party on the basis of a private-law contract in the meaning of §§ 611 ff of the Civil Code, regardless of whether the law of his/her country of origin deems him/her as such.

In the jurisdiction of the European Court of Justice, the term “temporary” with reference to an activity in the territory of a member-state in the context of freedom of provision of services is not defined in detachment from the circumstances, but is rather to be judged depending on the duration, the frequency and the regularity or continuity of the activity.

It should be noted that if a professional activity in Germany can no longer be regarded as temporary, taking into account the above criteria, but as a fixed and continuous employment, the *entirety* of the binding applicable German legislation applies.

#### **VII. Maximum work periods and minimum rest periods [Article 3(1)(a) of the Directive]**

- [Arbeitszeitgesetz](#)
- Law on Motor Vehicle and Tram Drivers (Drivers’ Law, [Fahrpersonalgesetz](#))
- Law on Closing Times ([Ladenschlussgesetz](#))
- [Seemannsgesetz](#)

There are also a number of generally obligatory blanket wage agreements, including the Federal Wage Agreement for the Building Industry, which contain regulations on maximum working times and minimum rest periods, which provide more details on the legislation. Wage agreements can be viewed in the Wages Register of the Federal Employment and Social Affairs Ministry, Villemombler Str. 76, 53123 Bonn.

The employment law is based fundamentally on an 8-hour working day and a 6-day working week (48 hours per week). The working day can without requiring special reasons, be increased up to 10 hours (60 hours per week), as long as the increase is equal to an average of 8 hours. Breaks must be at least 30 minutes for a working day in excess of 6 hours, and at least 45 minutes for working days of over 9 hours. After the end of the working day, an uninterrupted rest period of at least 11 hours must be provided. It is fundamentally forbidden to employ workers on Sundays and public holidays. Any divergences from these basic rules

are set out directly in the law, or are permissible through or on grounds of a wage agreement within a restricted scope.

### **VIII. Paid annual leave [Article 3(1)(v) of the Directive]**

#### [Bundesurlaubsgesetz](#)

In addition to the Employee Posting Law, the valid and generally obligatory wage agreements regarding leave are the

- The Federal Framework Wage Agreement for the Building Industry with reference to the procedures wage agreement
- Federal Framework Wage Agreement for the Roofing Trade
- The Federal Framework Wage Agreement for landscape gardening and sports fields
- Federal Framework Wage Agreement stonemasons and sculptors

All of these wage agreements can be found on the website of the inspection authorities:

#### [Tarifverträge Urlaub](#)

They can also be viewed in the Wages Register of the Federal Employment and Social Affairs Ministry (see above).

The statutory annual leave is at least 24 working days (4 weeks).

The longer leave in the Building Industry under the wage agreement is met by the Leave and Wages Supplement Fund for the Building Industry (ULAK). Employers pay a certain, regularly updated percentage; any financial leave payments are paid by ULAK when leave is taken. Further details can be seen on the ULAK home page (see above).

### **IX. Rates of pay [Article 3(1)(c) of the Directive]**

The key minimum wage agreements, pursuant to the Posting of Workers Act (*Arbeitnehmer-Entsendegesetz*), for the construction, industrial cleaning and mail services sectors which have up to now been covered by the Act can be found on the Customs Service homepage at:

#### [Tarifverträge Mindestlohn](#)

In addition, specific wage agreement provisions for the construction industry concerning the amount of overtime pay must be complied with: [Tarifverträge Mindestlohn](#)

With effect as from 24 April 2009, the Posting of Workers Act now also covers the following sectors:

- care provision sector (care of the elderly and out-patient nursing care),
- security services,
- waste management (including street-cleaning and winter sanding/salting of roads),
- training and further-training provision as referred to in Book 2 or 3 of the Social Security Code (*Sozialgesetzbuch – SGB*),
- industrial/trade laundry services;
- special work in coal mines.

The key collective agreements and the relevant statutory instruments in the above sectors, as well as the legal provisions governing the care sector, will in future be available on the Customs Service homepage.

Domestic and foreign employers are, without exception, required to offer their workers employed in Germany at least the working conditions specified in any generally binding collective agreement or statutory instrument. If such an agreement or instrument allows regional differences, the place-of-work principle applies, according to which workers are entitled to the remuneration payable at a particular place of work irrespective of whether they are permanently or only temporarily employed there.

In all sectors, the ban on violating moral principles, as enshrined § 134 and § 138 of the Civil Code (*Bürgerliches Gesetzbuch – BGB*), and in particular the ban on wage usury contained therein, must be complied with. According to current jurisprudence, wage usury exists where the relevant wage agreement for a particular activity is undercut by more than a third. In this case, the wage agreement does not need to be declared generally applicable. Wage agreements may, irrespective of any declaration of general applicability, be viewed in the official collective agreements register at the Federal Ministry of Employment and Social Affairs (see above).

## **X. Regulations on hiring out workers and for temporary workers [Article 3(1)(d) and 3(9) of the Directive]**

### [Arbeitnehmerüberlassungsgesetz](#)

Hiring out workers, in German law, means the hiring-out of a worker (temporary worker) by their employer (hirer-out) to a third party (hirer) to provide work for a third party (hirer).

The Temporary Employment Act (*Arbeitnehmerüberlassungsgesetz*) states that a permit is required for the commercial hiring-out of workers. The Act sets out the conditions and the procedures for issuing work hire permits.

The Temporary Employment Act also contains a number of protective provisions for temporary workers. In particular it states that when temporary workers are hired out, they are entitled to the same basic working conditions, including wages, as comparable full-time workers in the firm concerned. The only exception is where a wage agreement for temporary workers is in place.

The text of the Temporary Employment Act can be accessed on the following website:

### [Arbeitnehmerüberlassungsgesetz](#)

There are six national wage agreements and numerous in-house wage agreements for temporary workers. Some of the former have been published on the web, for example at [http://www.ig-zeitarbeit.de/start\\_flash.htm](http://www.ig-zeitarbeit.de/start_flash.htm); <http://www.amp-info.de/Tarif.62.0.html> or <http://www.dgb.de/themen/tarifpolitik/zeitarbeit/index.htm>.

These wage agreements are concerned exclusively with the working conditions for temporary workers, but do not lay down any provisions regarding the permissibility of temporary work in particular sectors or establishments. Nor do these wage agreements stipulate any minimum wage within the meaning of the Posting of Workers Act.

The Posting of Workers Act states that temporary workers hired out to perform work for which working conditions as stipulated in the Act are to be provided, must be offered at least these working conditions by the party hiring them out.

## **XI. Health, safety and hygiene at work [Article 3(1)(e) of the Directive]**

The list of the provisions on health and safety at work contained in legislative and administrative instruments is published on the homepage of the liaison office:

[Arbeitsschutz](#)

According to § 2 of the Posting of Workers Act, the provisions on safety, health and hygiene at work contained in German legal and administrative instruments are also mandatory and applicable to employees of an employer based abroad who are working in Germany.

The aim of the health and safety provisions applying in Germany is to protect workers from hazards arising at the workplace or in connection with their work.

Health and safety at work is the responsibility of the employer, who is also responsible for providing and maintaining, among other things, workshops, machinery, equipment and facilities, etc., and for organising the entire enterprise in such a way as to protect employees from risks to life and health. The employer must implement measures which protect against accidents and health risks at work, and which ensure that the design of a workplace is adapted to human needs. These obligations are laid down in Government regulations on health and safety at work, and in particular in the following acts and ordinances:

- Health and Safety at Work Act (*Arbeitsschutzgesetz*);
- Workplace Safety Act (*Arbeitssicherheitsgesetz*);
- Equipment and Product Safety Act (*Geräte- und Produktsicherheitsgesetz*);
- Industrial Safety Ordinance (*Betriebssicherheitsverordnung*);
- Screen Work Ordinance (*Bildschirmarbeitsverordnung*);
- Workplace Ordinance (*Arbeitsstättenverordnung*);
- Hazardous Substances Ordinance (*Gefahrstoffverordnung*);
- Biological Substances Ordinance (*Biostoffverordnung*);
- Construction Sites Ordinance (*Baustellenverordnung*);
- Health and Safety at Work (Noise and Vibrations) Ordinance (*Lärm-, Vibrations- und Arbeitsschutzverordnung*);
- Load Handling Ordinance (*Lastenhandhabungsverordnung*); and
- Occupational Medicine Ordinance (*Verordnung zur arbeitsmedizinischen Vorsorge*).

Further information on current German legislation on health and safety at work and workplace safety is available at: [www.bmas-arbeitsschutzgesetze.de](http://www.bmas-arbeitsschutzgesetze.de) and [www.gesetze-im-internet.de](http://www.gesetze-im-internet.de)

## **XII. Regulation of work and employment conditions for pregnant women and women giving birth [Article 3(1)(f) of the Directive]**

[Mutterschutzgesetz](#)

The workplace and working processes of a pregnant or breastfeeding woman must be so designed as to prevent danger to their health and the health of the child (which includes protective periods before and after birth; prohibition on dismissal; prohibition on certain types of strenuous or dangerous jobs; prohibition on overtime).

## **XIII. Regulation of working conditions for children and young people [Article 3(1)(f) of the Directive]**

[Jugendarbeitsschutzgesetz](#)

Ban on child labour; restriction on working time for young people to eight hours per day and 40 hours per week; previously established breaks of 30 minutes for every working period of more than four and a half hours, 60 minutes for a working day of more than six hours; a

continuous break of at least 12 hours after the end of each working day, and a fundamental prohibition of working at night, at weekends or on public holidays; a prohibition on activities that are dangerous to or unsuitable for young people (e.g. piecework, mining); medical examination.

#### **XIV. Equality of treatment between men and women and other provisions on non-discrimination [Article 3(1)(g) of the Directive]**

General Equal Treatment Act

Protection against discrimination in employment and the job by a ban on discrimination that covers all criteria of Article 13 EC Treaty (discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation).

#### **XV. Conditions of work and employment on other matters [Article 3(10) of the Directive]**

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#### **XVI. Procedural and administrative requirements**

1. Duty to notify (§ 18 AEntG), including the duty to name a responsible person and a person authorised to take delivery of notices.
2. The duty to have documents available for inspection at home (§ 19 (2) AEntG)
3. Duty to record the beginning, the end and the duration of the daily working time (§ 19 (1) AEntG).

All these obligations apply only to work that falls under the scope of a generally applicable collective agreement or a legislative regulation on minimum wage, including overtime rates and minimum holiday, in the sense of § 7 of the Act on posting of workers.

#### **XVII. Procedure for resolving disputes**

Claims under the Worker Posting Law can according to AEntG § 15 be pursued, for instance, at a court in the worker's home country, or before a German employment tribunal, regardless of other remedies available. In addition, this is without prejudice to workers who sue under other national or international legislation, for example, in a court of their home country.

If a posted worker wants to sue his employer for claims under the Worker Posting Law, he should regularly sue only at the court competent for his current place of employment in Germany.

The legal procedure is regulated at [Arbeitsgerichtsgesetz](#).

Important basic information concerning the legal procedures can be found under:

[http://www.berlin.de/sen/arbeit/gerichte/recht/uverf\\_arbg.html](http://www.berlin.de/sen/arbeit/gerichte/recht/uverf_arbg.html)

Complaints may be made in writing or verbally at the legal department of every employment tribunal for the record.

For legal disputes involving the Holiday and Wage Supplement Fund of the construction industry, the competent court is the Wiesbaden Employment Tribunal:

A list of all German courts, including employment tribunals, can be found on

<http://www.justizadressen.nrw.de/og.php>

## **XVIII. Information on the pursuit of claims and appeals through the courts**

If an administrative order or a court judgment is issued, information about the legal remedies available in Germany are provided in the document certifying this: every court judgement and every administrative decision includes a Legal Notice containing details of where and at what address an appeal can be made against the decision.