

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. In no way can it replace legislative, regulatory or administrative texts, or applicable collective agreements. The information below has been provided by the authorities of the Member States, which have made every effort to ensure its accuracy. 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, publication on the portal of the European Commission does not imply in any way that the latter or its DGs and Services consider the rules presented in this way to be in conformity with Community law.

II. Legislation transposing Directive 96/71/EC

The Act on obligatory working conditions for workers posted abroad and for those working regularly in Germany (*Gesetz über zwingende Arbeitsbedingungen für grenzüberschreitend entsandte und für regelmäßig im Inland beschäftigte Arbeitnehmer und Arbeitnehmerinnen*), official publication: *Bundesgesetzblatt* (BGBl., Federal Law Gazette) 2009 Part I p. 799, last amended by Article 6(1) and (4) of the Act of 11 August 2014, official publication: BGBl. 2014 I p. 1348. The *Bundesgesetzblatt* can be consulted at www.bgbl.de.

III. [Arbeitnehmer-Entsendegesetz](#) (Posting of Workers Act) Information on legislation applicable in accordance with the Directive

Information on legislation applicable to undertakings which post workers to the territory of another Member State for a limited period of time can be obtained at the following address:

Nationales Verbindungsbüro für entsandte Arbeitnehmer (National Liaison Office for posted workers):

Bundesfinanzdirektion West (Federal Finance Directorate West)
Abteilung Zentrale Facheinheit (Central Technical Division)
Wörthstraße 1
50668 Cologne
Tel.: 0221 222550
Fax: 0221 22255-3981
e-mail: Poststelle.bfd-west@zoll.bund.de

Information on the holiday fund schemes in the building industry can also be obtained from the:

Urlaubs- und Lohnausgleichkasse der Bauwirtschaft
(Holiday and wage supplement fund of the building industry) Wettinerstraße 7
65189 Wiesbaden

www.soka-bau.de
europaabteilung@soka-bau.de
Tel: +49-611-707-1000

Employers and employees can obtain information on the website of the customs administration at www.zoll.de on the legislation applicable in the case of a posting for employment purposes. This [website](#) can also inform employers on the notification and other requirements in the case of a posting, and provides notification [forms](#) for downloading.

The applicable legislation in Germany, in particular the *Arbeitnehmer-Entsendegesetz* (Posting of Workers Act) and the *Gesetz zur Regelung eines allgemeinen Mindestlohns* (*Mindestlohngesetz*, Act on the Minimum Wage - MiLoG) as well as the legal rules enacted on their basis can also be consulted online at www.gesetze-im-internet.de.

IV. Failure to comply with the prescribed terms and conditions of employment

Failure to comply with the applicable terms of employment in Germany, and cases of suspected illegal cross-border activities can be reported to the national liaison office at the contact address referred to under III.

In cases of discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation, victims can consult the [Federal Anti-Discrimination Agency](#). In particular, it can provide information on rights, identify means of legal redress under the provisions on the protection against discrimination, arrange consultations through other bodies and endeavour to achieve an amicable agreement between the parties involved.

V. Situations constituting a posting [Article 1 of the Directive]

The *Arbeitnehmer-Entsendegesetz* (Posting of Workers Act) applies to companies taking one of the following transnational measures:

Employing a worker in Germany.

VI. Posted worker [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 State in which they normally work.

The *Arbeitnehmer-Entsendegesetz*, enacted to transpose the Directive in Germany, applies to all workers who are employed on the territory of the Federal Republic of Germany, irrespective of the duration of employment in Germany. It therefore also applies to posted workers.

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 within the meaning of §§ 611 ff of the *Bürgerliche Gesetzbuch* (BGB, Civil Code), irrespective of whether the law of the country of origin classifies the person as a worker.

According to the case-law of the Court of Justice of the European Communities, the temporary nature of an activity carried out on the territory of a Member State in the context of the free provision of services cannot be determined abstractly, but should be judged on a case-by-case basis, depending on the duration, frequency and periodicity 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](#)
- *Gesetz über das Fahrpersonal von Kraftfahrzeugen und Straßenbahnen* (Law on Motor Vehicle and Tram Drivers, ([Fahrpersonalgesetz](#)))
- *Gesetz über den Ladenschluss* (Law on Closing Times, [Ladenschlussgesetz](#)), currently still valid in Bavaria, and the shop-closing laws of the federal *Länder*
- [Seearbeitsgesetz](#).

There are also a number of universally applicable framework collective agreements, which come under the areas set out in § 4 subpara 1 of the *Arbeitnehmer-Entsendegesetz* and therefore also apply to posted workers. They establish regulatory provisions on maximum working periods and minimum rest periods, substantiated by legislation. These include, in particular, the *Bundesrahmentarifvertrag für das Baugewerbe* (collective framework agreement for the construction industry) and the *Rahmentarifvertrag in der Gebäudereinigung* (framework collective agreement for the cleaning of buildings).

A list of the universally applicable collective agreements can be consulted in the:

Wages Register of the Federal Ministry of Labour and Social Affairs
Villemombler Str. 76
53123 Bonn

The *Arbeitszeitgesetz* is essentially based on an 8-hour working day and a 6-day working week (48 hours per week). The daily working time can be extended without special justification 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 on the basis of a wage agreement within a restricted scope.

VIII. Annual paid holidays [Article 3(1)(b) of the Directive]

The [Bundesurlaubsgesetz](#) provides that paid annual leave must amount to at least 24 working days (4 weeks) in the calendar year.

Workers may have higher holiday entitlements under the employment contract or an applicable collective agreement, in particular generally universally applicable framework collective agreements. Information on which universally applicable framework collective agreements come under the *Arbeitnehmer-Entsendegesetz* (Posting of Workers Act) and thereby also apply for posted workers can be found on the website of the customs authorities at <http://www.zoll.de/>.

The collective agreements themselves can also be viewed in the Wages Register of the Federal Employment and Social Affairs Ministry (see the address in Section VII above).

In the construction industry, on the basis of the local universally applicable framework collective agreements, there is a special procedure under which the payment of holiday bonuses is made through the *Urlaubs- und Lohnausgleichskasse* of the building sector (ULAK). Employers must pay a certain, regularly updated percentage; corresponding financial holiday benefits are provided in the event of leave by the ULAK. Further details can be found on the [ULAK website](#).

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

The *Arbeitnehmer-Entsendegesetz* makes it possible to establish minimum rates of pay in all sectors within the meaning of Article 3(1)(c) of the Directive. These rates are established on the basis of a corresponding sectoral collective agreement. In the health care sector, they are established on the basis of a committee's recommendation. If minimum rates of pay in this sense are made universally applicable in a sector, they then apply for all workers employed in Germany; this includes posted workers. Furthermore, the *Arbeitnehmer-Entsendegesetz* makes it possible for provisions on overtime pay in a sector to be generally binding, so that they apply for all workers.

National and foreign employers are required, without exception, to give their workers employed in Germany at least the working conditions which have been made universally applicable under the *Arbeitnehmer-Entsendegesetz*. Where a related regulatory provision allows for regional differentiation, the place of work principle applies. According to this principle, a worker is entitled to payment of the standard wage in the place of work in question, irrespective of whether (s)he is permanently or temporarily employed at this location.

An up-to-date list of all regulations on minimum wages under the *Arbeitnehmer-Entsendegesetz* can be found on the website of the customs administration at: www.zoll.de.

A minimum wage within the meaning of the *Arbeitnehmer-Entsendegesetz* can also be established on the basis of the *Arbeitnehmerüberlassungsgesetz* (Temporary Employment Act) ([Gesetz zur Regelung der Arbeitnehmerüberlassung - Arbeitnehmerüberlassungsgesetz \(AÜG\)](#) of 3 February 1995, official publication BGBl. I p. 158, last amended by Article 7 of the Act of 11 August 2014, official publication: BGBl. I p. 1348). Every hirer-out which employs a temporary worker in Germany is required to pay the temporary worker at least the wage established in an Ordinance on minimum wage levels pursuant to the *Arbeitnehmerüberlassungsgesetz*. Regardless of this, the hirer-out must ensure that the temporary worker benefits from the basic employment conditions applicable to the hirer, in principle for the duration of the assignment; this covers the wages paid to comparable workers of the borrowing company ("equal pay"); lower pay is possibly only through or on the basis of a collective agreement, although the collective agreement may not undercut the amount set by a *Loh-*

nuntergrenzenverordnung (minimum wage ordinance). The customs administration provides information on the existence and amount of a lower wage limit under the *Arbeitnehmerüberlassungsgesetz* at: <http://www.zoll.de>.

From 1 January 2015, the general legal minimum wage according to the *Mindestlohngesetz* will also apply (*Gesetz zur Regelung eines allgemeinen Mindestlohns* (Act on the regulation of a general minimum wage) ([Mindestlohngesetz - MiLoG](#)) of 11 August 2014 (BGBl. I p. 1348). The general legal minimum wage will initially amount to EUR 8.50 gross per hour. The minimum wage can subsequently be adjusted every two years at the proposal of a minimum wage committee, and for the first time on 1 January 2017. The *Mindestlohngesetz* establishes a minimum rate of pay within the meaning of the *Arbeitnehmer-Entsendegesetz* and applies also for posted workers. For certain groups, § 22 of the *Mindestlohngesetz* specifies whether they are considered as workers under this Act.

Minimum rates of pay under the *Arbeitnehmer-Entsendegesetz* and the *Arbeitnehmerüberlassungsgesetz* have precedence over the provisions on the minimum wage under the *Mindestlohngesetz*, but only insofar as they do not exceed the minimum wage.

During a transitional period from 1 January 2015 to 31 December 2017, minimum rates of pay under the *Arbeitnehmer-Entsendegesetz* or the *Arbeitnehmerüberlassungsgesetz* also take precedence over the minimum wage under the *Mindestlohngesetz* where they fall below it; however, in the period from 1 January 2017 to 31 January 2017, they must amount to at least EUR 8.50 gross per hour.

For newspaper deliverers, lower minimum rates of pay apply during a transitional period from 1 January 2015 to 31 December 2017; the details are set out in § 24 subpara 2 of the *Mindestlohngesetz* (Minimum Wage Act).

In all industries, irrespective of the preceding minimum rates of pay, the prohibition on unconscionability, and in particular the prohibition on wage usury contained therein, as in enshrined §§ 134, 138 of the Civil Code, must be observed. According to current jurisprudence, wage usury exists when the relevant wage agreement for the particular activity is undercut by more than one third. In this case the wage agreement does not need to be pronounced as universally applicable. Wage agreements may, independent of any declaration of universal applicability, be viewed in the Wages Register of the Federal Ministry of Employment and Social Affairs (see above under VII).

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 his/her employer (hirer-out) to provide work for a third party (hirer).

The *Arbeitnehmerüberlassungsgesetz* states that a permit is required for the commercial hiring-out of workers. It sets out the conditions and procedures for issuing work hire permits. The *Arbeitnehmerüberlassungsgesetz* also provides for a number of protective measures for temporarily assigned workers. In particular, it states that temporary workers, when they are hired out, are entitled to the same key working conditions, including wages (equal pay), as the comparable regular employees of the employing company. The only exception is when there is a wage

agreement for temporary workers in place (see the above details under IX on wages for the provision of temporary workers). There are national collective wage agreements and numerous in-house wage agreements for temporary workers. Some of the former have been published on the web, e.g. at <http://www.ig-zeitarbeit.de> or <http://www.personaldienstleister.de/>

XI. Health, hygiene and safety 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 home page of the [liaison office](#).

According to § 2 of the *Arbeitnehmer-Entsendegesetz*, 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:

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

Further information on current German legislation on health and safety at work and workplace safety is available at osha.europa.eu/fop/germany/de/ and 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 her health and the health of her child (which includes protection periods before and after the birth; prohibition of dismissal; prohibition of certain types of strenuous or dangerous jobs; prohibition of overtime).

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

[Jugendarbeitsschutzgesetz](#)

Prohibition of 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, underground work); medical examination.

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

[Allgemeines Gleichbehandlungsgesetz](#)

Protection from discrimination in employment and employment and occupation through a prohibition of discrimination which covers all the grounds for discrimination set out in Article 10 TFEU (gender, race or ethnical origin, religion or belief, age, disability and sexual identity).

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

Not applicable

XVI. Procedural and administrative requirements

Requirements under the *Mindestlohngesetz* (MiLoG)

If an employer based abroad employs one or more workers in the sectors or industries referred to in § 2a of the [Schwarzarbeitsbekämpfungsgesetzes](#) (Illegal Employment Act), (s)he must meet the following obligations:

1. Notification duty: Before the start of any work or service, written notification must be given which, among other things, includes the obligation to appoint a responsible agent and an authorised representative (§ 16 MiLoG).
2. The duty to have documents available for inspection in Germany (§ 17 subpara 2 MiLoG).
3. Duty to record the beginning, end and duration of the daily working period (§ 17 subpara 1 MiLoG).

When an assigning employer based outside Germany posts a worker to a hiring company in Germany (supply of temporary workers), the hiring company is required to make a corresponding notification (§ 17 subpara 3 MiLoG).

The following sectors and branches are referred to in § 2a of the *Schwarzarbeitsbekämpfungsgesetz* (Illegal Employment Act):

- building industry;
- hotel and restaurant services;
- passenger transport;

- freight, transport and related logistics;
- fairground amusements;
- forestry businesses;
- building cleaning;
- businesses involved in the building and dismantling of fairs and exhibitions;
- meat industry.

Requirements under the *Arbeitnehmer-Entsendegesetz* (AEntG)

For businesses and workers coming within the scope of a universally applicable collective agreement or a legal minimum wage ordinance, including overtime pay or minimum leave under the *Arbeitnehmer-Entsendegesetz* (see Section IX), the following requirements from the *Arbeitnehmer-Entsendegesetz* apply for employers based outside Germany:

1. Notification duty: Before the start of any work or service, written notification must be given which, among other things, includes the obligation to appoint a responsible agent and an authorised representative (§ 18 AEntG).
2. The duty to have documents available in Germany (§ 19 subpara 2 AEntG).
3. The duty to record the beginning, end and duration of daily working hours (§ 19 subpara 1 AEntG).

When a hirer-out based outside Germany posts a worker to a hirer in Germany (supply of temporary workers), the hirer is required to make a corresponding notification (§ 18 subpara 3 AEntG).

For these obligations, two ordinances issued on 26 November 2014, the *Mindestlohn-Meldeverordnung* (BGBI. I p. 1825) and the *Mindestlohn-Aufzeichnungsverordnung* (BGBI. p. 1824) provide for simplifications or modifications for certain sectors or groups of workers in order to take account of their particularities. This regards in particular workers employed on a mobile basis. Details on this can be found on the [homepage](#) of the monitoring authority

XVII. Procedures governing the settlement of disputes

If a complaint is brought before the Labour Court (see Section XVIII below), a conciliation procedure is first held to discuss the issue. The conciliation procedure is a hearing. It is held to discuss the entire dispute with the parties. The purpose is the amicable settlement of the legal dispute. Such an amicable settlement is generally reached through a mutual agreement recorded by the court. However, the procedure can also be ended by the complaint being withdrawn or relinquished, or by the employer recognising the claim. Only where an amicable agreement has been reached and the procedure does not end in another manner will the legal dispute be continued.

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

Claims under the *Arbeitnehmer-Entsendegesetz* and the *Mindestlohngesetz* can be brought pursuant to § 15 AEntG also before the German employment tribunals. 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 *Arbeitnehmer-Entsendegesetz*, (s)he should regularly sue only at the court competent for his/her current place of employment in Germany.

The legal procedure is regulated by the *Arbeitsgerichtsgesetz*. Important basic information on the legal procedures can be found at <http://www.berlin.de/gerichte/arbeitsgericht/verfahren/>

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

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 at http://www.bmj.de/cln_164/DE/Service/GerichtsStAFinder/doc/Gerichte_und_Staatsanwaltschaften_doc.htm.

If an administrative order or a court judgement is issued, information about the legal remedies available in Germany are provided in the document certifying it. Every court judgement and every administrative decision includes a legal appeal procedure setting out details of where, and at what address, an appeal can be made against the decision.