

Here we offer you a non-binding translation of the German information sheet for temporary workers. We do not assume any liability for the accuracy of the translation. You will find the legally binding version in German on the website of the Agentur für Arbeit.

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

## leaflet

### for temporary employees

You are a temporary employee if your employer (lender) provides you to a third party (borrower) for work performance. You are transferred if you are integrated into the work organization of the hirer and are subject to his instructions.

If you are not a German citizen, you can ask the lender to provide you with this information sheet and proof of the essential working conditions (see A.) in your native language.

The current version of this leaflet can be found on the Internet at [www.arbeitsagentur.de](http://www.arbeitsagentur.de) > Unternehmen > Downloads.

#### A. Employment relationship

Your employer (lender) must have a permit from the Federal Employment Agency to provide you with temporary workers. Your employment contract is invalid if your employer does not have a permit and the exceptions from the permit requirement do not apply. In this case, an employment relationship is created between you and the hirer. You have the possibility to maintain the employment relationship with your employer. To do so, you must declare in writing to the lender or the hirer within a period of one month that you wish to maintain the employment relationship with the lender (so-called declaration of adherence). The following is to be

note: You must first present your written declaration in person at an employment agency, establish your identity there and make a note of this on your letter. You must then present this declaration to your employer or the hirer within 3 days. The detention declaration does not legalize the illegal hiring of employees, neither for the past nor for the future. The assignment is to be terminated immediately.

If the permission ceases to exist during the course of the employment, the lender must inform you of this fact. The hirer must inform you of the expected end of the period of notice. The period for the execution of the contract is 12 months at the most. The term "execution period" means the maximum period of time the lender has to re-align contracts already concluded with the borrower.

Your employer may only transfer you if there is an employment relationship between you and the employer. Before each assignment to a hirer, your employer must inform you that you are working as a temporary employee.

The proof of the essential contractual conditions of the temporary employment relationship depends on § 11 paragraph 1 AÜG and the provisions of the law on proof. The lender (employer) is obligated, at the latest one month after the beginning of the employment relationship, to record the essential contractual conditions and contents of the temporary employment relationship in writing, sign them and hand them over to you. The written proof must contain at least the following information:

- Your name and address and the name and address of the lender,
- the date on which the employment relationship begins,
- in the case of fixed-term employment relationships, the expected duration of the employment relationship,
- the place of work or, if you are not supposed to work only at a certain place of work, a note that you can be employed at different places,
- a short description of your activity,
- the composition, amount and due date of the remuneration including surcharges, allowances, premiums and

special payments and other parts of the salary,

- the agreed weekly or monthly working time,
- the number of vacation days,
- the mutual notice periods of the employment relationship,
- a general reference to the collective agreements, works or service agreements applicable to the employment relationship,
- the licensing authority as well as the place and date of granting of the licence according to § 1 AÜG,
- Type and amount of benefits for periods during which they are not awarded

In principle, they may be left to the same borrower for a maximum of 18 months<sup>1</sup>. In order to ensure that your employer does not exceed the maximum duration of the assignment, he must also take your previous assignments with the same hirer into account for other hirers, provided that there are no more than 3 months between the assignments. Deviations from the maximum transfer period of 18 months can be made by collective agreement of the assignment industry or - within the scope of such a collective agreement - by works or service agreement in the assignment company. If the maximum transfer period is exceeded, the employment relationship with your employer is invalid and an employment relationship is created between you and the hirer. You have the possibility to maintain the employment relationship with your employer (lender). For this purpose, you must submit the declaration of adherence described in the 1st paragraph of the first paragraph below.

The contract between your employer and the hirer must be expressly designated as a temporary employment contract (so-called disclosure). In addition, your employer and the hirer must name you by name in the temporary employment contract or by reference to this contract prior to your assignment (so-called concretization). If these obligations are not fulfilled, this will affect your employment relationship. The employment relationship with your employer is then invalid and an employment relationship is created between you and the hirer. Also in this case you have the possibility to continue the employment relationship with your employer (lender). For this purpose

you must submit the declaration of detention described under A., 1st paragraph.

In principle, you are entitled to reimbursement of expenses (e.g. travel and overnight expenses) in the event of external deployment. For example, you are to be reimbursed for travel costs between the operating headquarters of the lender and the operating headquarters of the hirer.<sup>2</sup>

However, deviating regulations may be agreed upon in collective or individual agreements. Whether and, if applicable, to what extent these expenses can also be reimbursed by the tax office depends on the tax regulations to be observed in each individual case.

The participation rights of the employee representations (works councils, staff councils) according to the Works Constitution Act or the federal and state laws on employee representation must also be observed by the distributors and employees.

The lender may not forbid you to enter into an employment relationship with the hirer after termination of your temporary employment relationship. If such a prohibition is in your agreement with the lender or in the agreement between the lender and the borrower, then such a prohibition is ineffective.

The lender has to pay you the agreed remuneration for work even if he cannot employ you with a hirer.

You are not obliged to work for a hirer if the hirer is directly affected by an industrial action. In the event of such a labour dispute, the hirer must inform you that you have the right to refuse performance and that you do not have to work for this hirer. The hirer is forbidden to let you work in his business if the business is directly affected by a labor dispute. Exceptionally, your employment in a company on strike is permitted if the hirer ensures that you are not employed as a strike breaker.

## **B. Principle of equality**

For the time you work for the hirer, you are generally entitled to the essential services of the hirer from the first day of the assignment.

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<sup>1</sup> For the calculation of the period, only surrender periods completed after 1st of April 2017 are relevant. <sup>2</sup>Cf. § 670 of the German Civil Code (BGB)

This includes the working conditions (such as working hours, holidays, etc.) including remuneration, which apply to a comparable employee in the company of the hirer (principle of equality)<sup>3</sup>. You can request information about the essential working conditions and the remuneration from your hirer.

This principle of equality may only be deviated from in the following case: Your temporary employment relationship is governed by a collective agreement which regulates the essential working conditions. Such a collective agreement is to be applied on the one hand, if a collective agreement was concluded between a trade union and an employers' association and you are a member of the trade union and your employer is a member of the employers' association involved. On the other hand, the application of a specific collective agreement can be agreed in the employment contract between you and your lender.

By or on the basis of a collective bargaining agreement for temporary employment, you may in principle only be paid a lower wage in the first 9 months<sup>4</sup> of a temporary assignment to a hirer. Your employer must also credit your previous assignments with the hirer in full for other hirers if there is no more than 3 months between the assignments. You may be paid a lower salary which differs from that of a comparable employee in the company of the hirer for more than 9 months, if a valid collective agreement stipulates an equivalent salary and stipulates that you will receive this salary by means of hourly increases after the 15th month of your assignment at the latest. The hourly increase of the salary must start after 6 weeks of employment at the latest.

The situation is different if you are transferred to a person with whom you have previously been employed for a limited or unlimited period of time within the last six months before your current transfer (revolving door clause). This also applies to a hirer who forms a group with your previous employer. In these cases, you are entitled to the same employment conditions as a comparable employee or a comparable employee from the beginning.

of the borrowing company, including the paid fee.

## C. Wage floor and industry minimum wages

The Federal Ministry of Labour and Social Affairs (BMAS) has issued the Fourth Ordinance on a minimum wage for temporary workers (LohnUGAÜV 4). The minimum hourly wages set by the BMAS in LohnUGAÜV 4 take precedence over the statutory minimum wage. This means that your employer must pay you at least the minimum hourly rate specified in the legal regulation. The same applies to any successor regulations of the LohnUGAÜV 4. If there is no wage floor regulation for the hiring out of employees, the regulations of the minimum wage law<sup>5</sup> take their place. The employer is then obliged to grant you a salary in the amount of the current general legal minimum wage.

According to the LohnUGAÜV 4 the lender is obliged to pay you at least the following gross remuneration per working hour (minimum hourly wage):

1. in the federal states of Berlin, Brandenburg, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt and Thuringia
  - a) from 01.06.2017 to 31.03.2018  
**8,91 Euro**
  - b) from 01.04.2018 to 31.12.2018  
**9,27 Euro**
  - c) from 01.01.2019 to 30.09.2019  
**9,49 Euro**
  - d) from 01.10.2019 to 31.12.2019  
**9,66 Euro**
  - e) from 01.09.2020 to 30.09.2020  
**9,88 Euro**
  - f) from 01.10.2020 to 31.03.2021  
**10,10 Euro**
2. in the other federal states
  - a) from 01.06.2017 to 31.03.2018  
**9,23 Euro**

<sup>3</sup> Cf. § 8 para. 1 AÜG

<sup>4</sup> For the calculation of this period, the values from 1 April 2017 shall apply.

<sup>5</sup> Information on the current status of the existing ordinances on minimum hourly rates can be found at <https://www.bmas.de>.

- b) from 01.04.2018 to 31.03.2019  
**9,49 Euro**
- c) from 01.04.2019 to 30.09.2019  
**9,79 Euro**
- d) from 01.10.2019 to 31.12.2019  
**9,96 Euro**
- e) from 01.09.2020 to 31.03.2021  
**10,15 Euro**

3. in the whole federal territory

- a) from 01.04.2021 to 31.03.2022  
**10,45 Euro**
- b) from 04/01/2022 to 12/31/2022  
**10,88 Euro.**

You are to be paid the minimum hourly wage of your place of work. If you work outside of Germany and the minimum hourly wage at your place of employment is higher than at your place of work, you are entitled to this higher minimum hourly wage.

You are entitled to receive payment of the minimum hourly wage at the latest on the 15th bank working day (reference place is Frankfurt am Main) of the month following the month for which the minimum hourly wage is to be paid.

This provision does not apply to the hours worked in addition to the regular monthly working time if there is a collective agreement provision on flexible working hours with a working time account. This working time account may comprise a maximum of 200, in case of seasonal fluctuations in individual cases up to 230, plus hours. If you work more than

If you have 150 plus hours in your working time account, your hirer must secure the plus hours exceeding 150 hours, including the social insurance contributions due on them, against insolvency and provide proof of this insolvency protection to you. Without this proof, your work time account may not exceed 150 plus hours.

If your contractually agreed working time is less than 35 hours per week, the upper limit of the working time account will be adjusted according to your working time.

At your request, you will be paid hours from your work time account that exceed 105

plus hours out. In the case of part-time employees, the number of plus hours is based on the respective contractually agreed working time.

The minimum wage entitlement is specially protected. Individual or collectively agreed exclusion or expiration periods, which provide for the expiration of claims arising from the employment relationship if the claim is not asserted within a certain period (e.g. 3 months), cannot cover the minimum wage claim. In these cases, the employer cannot refuse to pay a remuneration in the amount of the lower wage limit because the exclusion or forfeiture period has expired. Exclusion or forfeiture periods in individual contracts may be invalid in their entirety due to a violation of the transparency requirement of § 307 (1) sentence 2 BGB if they do not exclude the lower wage limit claim. In this case, the employer cannot invoke the exclusion or expiration period with regard to any individual contractual wage claims exceeding the lower wage limit claim.

If you take over activities (e.g. building cleaners, painters and varnishers, maintenance) for which a different minimum wage in the industry currently applies on the basis of the German Employee Employment Act (AEntG), you are entitled to the minimum wage specified there during your employment in accordance with § 8 paragraph 3 AEntG. You will find an overview of the minimum wages within the meaning of the AEntG under the following link :

[https://www.bmas.de/Shared-Docs/Downloads/DE/total\\_minimum\\_wage\\_overview.pdf? blob=publicationFile&v=9](https://www.bmas.de/Shared-Docs/Downloads/DE/total_minimum_wage_overview.pdf? blob=publicationFile&v=9).

## D. Social Security

The lender as your employer is, like any other employer, obliged to pay the social insurance contributions. If he does not comply with this obligation, the hirer<sup>6</sup> is liable for this in the case of an assignment.

## E. Industrial safety and accident prevention

The public-law regulations of the industrial property law apply to your activity with the hirer, which the operation of the hiring company must also comply with. For the compliance with these

<sup>6</sup>Cf. § 28e paragraph 2 Fourth Book of the Social Security Code (SGB IV)

Regulations are the responsibility of the lender and the borrower. The hirer must also take the necessary accident prevention measures required by law. They are obliged to follow the corresponding regulations.

Furthermore, the hirer must inform you about the consequences of this, especially before the start of the employment and in the event of changes in his field of work:

This includes information on the risks to safety and health to which you may be exposed at work, on the measures and facilities for preventing or protecting yourself, including occupational health precautions, on the need for special qualifications or professional skills, on the particular hazards of the work area and on the measures taken or to be taken.

## **F. Your duty to register in time for work<sup>7</sup>**

If your employment relationship with the lender ends, you are obliged to report personally to your employment agency at least three months in advance. If you learned of the termination less than three months before, you must report to your employment agency at the latest three days after you have learned of the termination.

It is sufficient if you inform your employment agency of the termination of your employment relationship within the specified periods, e.g. online [www.arbeitsagentur.de](http://www.arbeitsagentur.de)) or by telephone and make an appointment for personal job application registration.

You have fulfilled your obligation to register as a jobseeker only when you meet the agreed appointment with the Employment Agency.

Please note that a blocking period of one week may occur if you do not report in time. A blocking period means that although you are entitled to unemployment benefit, this entitlement is suspended and you will not receive unemployment benefit for the week in which it is suspended.

## **G. Duty of the discharger to inform about vacant jobs**

The hirer has to inform you about vacant jobs that are to be filled in his company. This can happen e.g. by a notice at a place accessible for you in the enterprise or enterprise of the borrower.

## **H. Access to Community facilities or services**

To the Community bodies or  
- In the case of the services provided by a company - such as childcare facilities, meals or transport - the hirer must grant you access to them under the same conditions as comparable employees in his company. However, there may be objective reasons which justify different treatment. Such a reason may exist if you are only employed by the hirer for a short period of time and it would be a disproportionate administrative burden for the hirer to give you access to Community facilities and services.

## **I. Who helps with disputes or questions?**

The labor courts are responsible for deciding disputes arising from the employment relationship between you and the lender (employer). For further information, please contact the trade unions and employers' associations, attorneys at law as well as the employment agencies in Düsseldorf, Kiel and Nuremberg, which are responsible for monitoring the lender.

If you are in doubt as to whether the lender has the necessary permission from the Federal Employment Agency, you can contact the relevant team of temporary employment agencies in Düsseldorf, Nuremberg and Kiel. These teams, as well as any other employment agency, will also receive notices of legal infringements from licensees and follow them up.

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<sup>7</sup> Cf. § 38 paragraph 1 Third Book of the Social Security Code (SGB III)

The three responsible teams for temporary employment can be reached via the following contact data:

- Agency for work Duesseldorf, 40180 Duesseldorf (Tel.: 0211 692 4500);
- Employment Agency Kiel, 24131 Kiel (Tel.: 0431 709 1010);
- Nuremberg Employment Agency, 90300 Nuremberg (Tel.: 0911 529 4343).

The temporary employment teams are responsible for licensees of several federal states. The team at the Düsseldorf Employment Agency for the federal states of North Rhine-Westphalia and Hesse. The team at the Nuremberg Employment Agency for the federal states of Bavaria, Baden-Württemberg, Rhineland-Palatinate and Saarland. The team at the Employment Agency in Kiel for all other federal states.