

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

# Information Leaflet for Agency Workers

You are an agency worker if your employer (temporary employment agency) assigns you to a third party (hirer) for the performance of work.

If you are not a German citizen, you can require the temporary employment agency to provide you with this information leaflet and the proof of the substantial employment conditions (see Section A.3) in your native language.

## A. Employment

Your employer (temporary employment agency) must have a permission of the Federal Employment Agency (German: "Bundesagentur für Arbeit") to act as a temporary employment agency. Your contract of employment will be ineffective if your employer does not hold a permission and the exceptions from the obligation to hold a permission are not applicable either. In that case, an employment relationship will be created between you and the hirer. You will have the possibility to continue the employment relationship with your employer. To do so, you will have to make a written declaration to the temporary employment agency or the hirer that you wish to continue the employment relationship with the temporary employment agency (declaration of continuation) within a period of one month. Please note that first, you will have to present your written declaration to an Employment Office (German: "Agentur für Arbeit" or "Arbeitsagentur") personally, have your identity confirmed there and ask for a confirmation note on your letter. Afterwards, you will have to present the declaration to your employer or the hirer within 3 days.

If the permission expires during the period of your employment, the temporary employment agency must inform you

immediately. The temporary employment agency must also inform you of the expected end of the wind-up period. The maximum period for winding up the contract is 12 months. "Wind-up period" means the maximum period which the temporary employment agency will have in order to implement contracts that have already been concluded with the hirer.

Your employer may only assign you if an employment relationship exists between you and the employer. Before each assignment to a hirer, he must inform you that you will have the status of an agency worker.

The proof of the substantial contractual conditions of the temporary employment relationship will be governed by Art. 11.1 of the Temporary Employment Act (AÜG) and the provisions of the Act on the Proof of Substantial Conditions Applicable to Employment Relationships (NachweisG). The temporary employment agency will be obliged to prepare a written statement of the main contents of the temporary employment relationship. That written proof must at least contain the following information:

- Your name and address, as well as the name and address of the temporary employment agency,
- the date on which the employment commences,
- in the case of a time-limited employment, the expected duration of the employment,
- the job location, or, if you are not supposed to work only at one particular location, the information that you may be employed at different locations,
- a short description of your tasks,
- the structure, amount and due dates of the pay, including the extra payments, allowances, premiums and special payments as well as any other components of the pay,
- the agreed weekly or monthly working time,
- the number of leave days,
- both Parties' periods of notice to terminate the employment,
- general reference to the collective agreements as well as company or works agreements applicable to the employment,
- the public authority granting permission, as well as the place and date on which the permission under Art. 1 of the AÜG was granted,
- the type and amount of payments for periods in which you are not assigned.

No later than one month after the commencement of the employment, your temporary employment agency must lay down the main conditions of contract in writing, sign them and hand them over to you.

Please make sure that you always receive the written proof before the commencement of the employment so that you are legally on the safe side; this is particularly important in the case of a time-limited contract/employment.

Principally, you may only be assigned to the same hirer for up to 18 months<sup>1</sup>. In order not to exceed the maximum period of assignment, he must fully take into account your previous assignments to the same hirer, even for other temporary employment agencies, unless the period between the assignments is more than 3 months. Deviations from the 18-month maximum period of assignment can be made by a collective agreement of the hirer's sector or – within the scope of application of such a collective agreement – by company or works agreements at the hirer's business. When the maximum period of assignment is exceeded, the employment with your employer will be ineffective and an employment relationship between you and the hirer will be created. You will have the possibility to continue the employment relationship with your employer (temporary employment agency). To do so, you will have to make the declaration of continuation described in Section A.1.

The contract between your employer and the hirer must be designated as an agreement on the supply of a temporary worker expressly (so-called disclosure). In addition, your employer and the hirer must mention your name expressly in the agreement on the supply or with reference to that agreement before the start of your assignment (so-called specification). If those obligations are not fulfilled, this will have effects on your employment. The employment relationship with your employer will then be ineffective, and an employment relationship between you and the hirer will be created. You will have the possibility to continue the employment relationship with your employer (temporary employment agency). To do so, you will have to make the declaration of continuation described in Section A.1.

Generally, you may claim the reimbursement of expenses (e.g. travel costs or expenses for overnight accommodation) in the case of an assignment outside your town or city.

For example, you must be reimbursed the travel costs for the journeys between the

premises of the temporary employment agency and the hirer's premises.<sup>2</sup>

However, collective agreements or individual contracts may contain deviating regulations. Whether, and to what extent, those expenses may also be reimbursed by the revenue office depends on the tax regulations that must be taken into account in the individual case.

The participation rights of the employee representation bodies (works councils, staff councils) according to the Works Constitution Act or Federal Staff Council Act, respectively, must also be respected by temporary employment agencies and their employees.

The temporary employment agency may not forbid you to conclude a contract of employment with the hirer after the end of your temporary employment relationship. If your agreement with the temporary employment agency or the agreement between the temporary employment agency and the hirer contains a restraint to this effect, the restraint will be ineffective.

You must receive the agreed pay for your work from the temporary employment agency even when the agency cannot assign you to any hirer.

You will not be obliged to perform work for a hirer who is directly concerned by industrial action. In the case of such industrial action, the temporary employment agency must inform you that you have the right to refuse performance and not to work for that particular hirer. The hirer is not allowed to let you perform work at his business that is directly concerned by industrial action. In exceptional cases, your assignment to a business in which a strike is taking place is allowed, provided that the temporary employment agency ensures that you will not be used as a strikebreaker.

## B. Principle of Equal Treatment

For the period in which you work at a hirer's business, you are generally, from the first day of the assignment, entitled to substantial employment conditions (such as working time, leave etc.) and a pay which are equivalent to those of comparable employees of the hirer's business<sup>3</sup>.

You may require your hirer to provide information about the substantial employment conditions and the pay.

Deviations from that principle of equal treatment will only be possible in the following case: A collective agreement which regulates

<sup>1</sup>Only the periods of assignments from 01 April 2017 are applicable to the calculation of the period.

<sup>2</sup>cf. Art. 670 of the Civil Code (BGB)

<sup>3</sup>cf. Art. 8.1 of the AÜG

the substantial employment conditions is applicable to your temporary employment relationship. Such a collective agreement will apply if a collective agreement has been concluded between a trade union and an employers' association and if you are a member of the trade union and your employer is a member of the employers' association concluding the agreement. Besides, the application of a particular collective agreement may be agreed in the contract of employment between you and your temporary employment agency.

By, or on the basis of, a collective agreement on agency work, you may generally receive a lower pay only in the first 9 months<sup>4</sup> of an assignment to a particular hirer. Your employer must fully take into account all of your previous assignments with the same hirer, even for other temporary employment agencies, unless the period between the assignments is more than 3 months. You may receive a lower pay deviating from that of a comparable employee of the hirer's business for more than 9 months if, in an applicable collective agreement, an equivalent pay is determined and it is stipulated that you will reach the amount of that pay by a gradual increase from the 16th month of your assignment. The gradual increase of your pay must commence after the 6th week of your assignment at the latest.

The situation is different if you are assigned to a hirer that you have worked for previously within the last six months before the temporary employment agency assigned you to the hirer. This also applies to any hirer that forms a group of affiliated companies with the present hirer. In those cases, your temporary employment agency must ensure that the principle of equal treatment is adhered to.

### C. Minimum Wage / Minimum Wage Level

Your employer is obliged to pay you at least the statutory minimum wage in the gross amount of **8.84 euros** per hour<sup>5</sup>. This also applies to periods in which you are not assigned.

If you should take over activities to which a deviating sectoral minimum wage or a deviating minimum pay applies pursuant to a collective agreement which has been declared generally binding<sup>6</sup>, you may claim the minimum pay stipulated in that agreement for the duration of your assignment.

The Federal Ministry of Labour and Social Affairs (BMAS) may fix a binding minimum wage level for temporary employment agency work at the suggestion of the parties to the collective agreement<sup>7</sup>. The minimum hourly wages fixed by the BMAS have priority over the statutory minimum wage, meaning that your employer must pay you at least the minimum hourly wage that is fixed in the applicable decree.

The parties to the collective agreements on agency work have submitted to the BMAS a proposal for enacting a Third Decree on a Minimum Wage Level for Temporary Employment Agency Work. From the time of its entry into force, the temporary employment agency will be obliged, pursuant to that decree, to pay you at least the following gross pay per working hour (minimum hourly pay):

1. in the federal states of Berlin, Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia
  - a) from the time of the decree's entry into force till 31/03/2018  
**8.91 euros**
  - b) from 01/04/2018 till 31/12/2018  
**9.27 euros**
  - c) from 01/01/2019 till 30/09/2019  
**9.49 euros**
  - d) from 01/10/2019 till 31/12/2019  
**9.66 euros,**
2. in all other federal states
  - a) from the time of the decree's entry into force till 31/03/2018  
**9.23 euros**
  - b) from 01/04/2018 till 31/03/2019  
**9.49 euros**
  - c) from 01/04/2019 till 30/09/2019  
**9.79 euros**
  - d) from 01/10/2019 till 31/12/2019  
**9.96**

**euros.** You must receive the minimum hourly pay applicable to your job location. If you work outside your town or city and the minimum hourly pay for your place of employment is higher than the one for your job location, you will be entitled to that higher minimum hourly pay.

<sup>4</sup>The periods of assignments from 01 April 2017 are applicable to the calculation of that period.

<sup>5</sup>Since 01 January 2017, pursuant to Art. 1 of the Minimum Wage Adjustment Ordinance (MiLoV) in connection with Art. 11 of the Minimum Wage Act (MiLoG)

<sup>6</sup>cf. Art. 3ff of the Posting of Workers Act (AEntG)

<sup>7</sup>cf. Art. 3a of the AÜG

You may require that the minimum hourly pay should be paid to you no later than the 15th bank working day (place of reference: Frankfurt am Main) following the month for which the minimum hourly pay is paid.

The above regulation does not apply to the hours worked in addition to the regular monthly working time if the collective agreement contains a regulation on the flexibilisation of working time by means of a working time account. That working time account may contain no more than 200 credit hours (or 230 in individual cases if seasonal fluctuations exist). If you have more than 150 credit hours on your working time account, your temporary employment agency must insure the credit hours which exceed 150 hours – including the social insurance contributions that are due on them – against insolvency and prove that insolvency insurance to you. Without that proof, your working time account may contain no more than 150 credit hours.

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

On your request, you will receive a payment for hours on your working time account which exceed 105 credit hours. For part-time employees, the number of credit hours is determined on a pro-rata basis according to the working time agreed in the contract of employment.

## **D. Social Insurance**

As your employer, the temporary employment agency will be obliged to pay the social insurance contributions, like any other employer. If he does not fulfil that obligation, the hirer will be liable in the case of an assignment<sup>8</sup>.

## **E. Occupational Safety and Accident Prevention**

The public law provisions concerning occupational safety which the hirer's business must comply with will also apply to your work at the hirer's business. The temporary employment agency and the hirer will be responsible for the compliance with those provisions. The hirer must also take all necessary accident prevention measures that are prescribed by law. You will be obliged to adhere to the relevant regulations.

Furthermore, the hirer must inform you of the following, especially before the commencement

of the assignment and in the case of changes in his area of work:

Health and safety risks that you may be exposed to during your work, as well as measures and facilities for averting them or for protection – including occupational health protection – the requirement of special qualifications or professional skills as well as special risks at the working area and the measures which have been taken or are to be taken.

## **F. Your Obligation to Register as a Job-seeker in Time<sup>9</sup>**

If your employment with the temporary employment agency is terminated, you will be obliged to register as a job-seeker at your local Employment Office at least three months in advance. If you are informed of the termination less than three months in advance, you must register as a job-seeker no later than three days after you are informed of the termination.

It will be sufficient to contact the Employment Office within the above periods, e.g. online (<http://www.arbeitsagentur.de>) or by telephone, to inform it of the termination of the employment and make an appointment for the personal registration as a job-seeker.

You will not have fulfilled your duty to register as a job-seeker completely until you appear at the appointment with the Job Centre.

Please note that a disqualification time of one week may apply if you do not register in time. If this is the case, it means that despite an entitlement to unemployment benefits (German: "Arbeitslosengeld I"), that entitlement will be suspended and you will not receive any unemployment benefits for the week in which the entitlement is suspended.

## **G. Hirer's Duty to Give Information about Job Vacancies**

The hirer must inform you about any job vacancies that are to be filled at his company. This may be done by posting information on a notice board at a point at the hirer's company or plant to which you have access.

## **H. Access to Common Facilities or Common Services**

The hirer must give you access to the common facilities and services at his company – e.g.

<sup>8</sup>cf. Art. 28e.2 of the Social Security Code, Book Four (SGB IV)

<sup>9</sup>cf. Art. 38.1 of the Social Security Code, Book Three (SGB III)

child care facilities, meals and means of transport – at the same conditions that apply to comparable employees at his business. However, objective reasons may exist which justify an unequal treatment. Such a reason may exist if you are only assigned to the hirer for a short period and it would mean an unreasonable administrative effort to give you access to the common facilities and services.

## **I. Where to Find Help in the Case of Disputes or Questions?**

The labour courts are in charge of deciding any disputes arising from the temporary employment relationship between you and the temporary employment agency. You can obtain more information from the employers' and employees' associations, from lawyers and from the Employment Offices of Düsseldorf, Kiel and Nuremberg (German: Nürnberg), which are in charge of supervising the temporary employment agencies.

In cases of doubts on whether the temporary employment agency holds the required permission of the Federal Employment Agency, you can contact the competent Temporary Employment Agency Work Team (German: "Team Arbeitnehmerüberlassung") at the Employment Office of Düsseldorf, Nuremberg or Kiel. Those teams also accept information about possible violations of laws by permission holders and investigate the matters.

The three competent Temporary Employment Agency Work Teams can be contacted as follows:

- 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 Temporary Employment Agency Work Team is in charge of permission holders of several federal states. The team at the Düsseldorf Employment Office is in charge of the states of North Rhine-Westphalia and Hesse. The team at the Nuremberg Employment Office is in charge of the states of Bavaria, Baden-Württemberg, Rhineland-Palatinate and Saarland. The team of the Kiel Employment Office is in charge of all other federal states.

The most recent version of this Information Leaflet (in German) can be found on the Internet on [www.arbeitsagentur.de](http://www.arbeitsagentur.de) > Unternehmen > Merkblätter und Formulare.