

Information sheet

for temporary agency workers

by German Federal Employment Agency
(Bundesagentur für Arbeit),

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You are a temporary agency worker if your employer (temporary work agency) assigns you to work for a third party (client company).

If you do not have German citizenship, you can ask your employer to hand out to you this information sheet and the documentation of basic working conditions (cf. A. 2) in your native language.

A. Employment relationship

1. Your temporary work agency must have an authorisation for the provision of temporary agency workers from the German Federal Employment Agency. Your employment contract is not valid if your employer does not have this authorisation and the exemptions from the authorisation requirement do not apply. In such cases you will have an employment relationship with the client company that begins on the date that was agreed by the agency and the client company. If the employer's authorisation is revoked during the course of the contractual relationship, your employer must inform you of this change immediately. Your employer must also inform you of the presumable end of

winding-up operations. The deadline for winding-up the contract is 12 months maximum. A winding-up deadline is understood as the maximum time that your agency has left to implement contracts it has already concluded.

2. The **documentation of basic contract conditions** applicable to a temporary agency work relationship is governed by Section 11 Paragraph 1 of the Temporary Employment Act [AÜG] and the terms of the Employment Documentation Act [Nachweisgesetz].

The agency is required to document the basic facts of the temporary agency work relationship in writing. This written documentation must include at least the following details:

- Your name and address and your agency's name and address,
- the date when the employment relationship begins,
- if you have a fixed-term employment relationship, the expected duration of the employment relationship,
- the work location or, if you will be working at more than one location, a note that you may be working at multiple locations,
- a short job description,
- composition, level and due date of payment, including all supplements, bonuses, premiums and special payments as well as any other components of pay,
- the agreed weekly or monthly working hours,
- the number of days of annual leave,

- the periods of notice to be given by both parties to terminate the employment relationship,
- general information about which collective labour agreements, company and works agreements are applicable to the employment relationship,
- the public authorisation office and the place and date that the authorisation was issued as per Section 1 of the Temporary Employment Act [AÜG]
- type and amount of payment and other working conditions for periods when you are not assigned to a client company.

Your agency must provide you with a signed copy of the written documentation of the basic contract conditions no later than one month after the employment relationship begins.

For your legal security, make sure that you always receive this written documentation before the commencement of your employment relationship. This is particularly important for fixed-term contracts/employment relationships.

3. You can generally claim reimbursement for expenses (such as travel and lodging costs) incurred through external assignments. For example, you are entitled to reimbursement for the cost of travelling from your agency's place of business to the client company's place of business¹.

Other rules can be agreed by means of a collective labour agreement or individual agreement. Whether and to what extent the tax office will also reimburse these

¹ Cf. Section 670 of the German Civil Code [BGB]

expenses depends on the tax regulations that apply in each particular case.

4. Agencies and their employees should also take into account the participation rights of **employee representatives** (works councils, staff councils) as defined by the Works Constitution Act [Betriebsverfassungsgesetz] and the Federal Personnel Representation Act [Bundespersönalvertretungsgesetz].

5. Your agency is not allowed to forbid you to enter an employment relationship with the client company **after your employment contract with the agency has ended**. If your agreement with your agency or the agreement between your agency and the client company prohibits this, that condition is invalid.

6. Your agency is required to pay you the agreed **remuneration** even if it is unable to find work for you with a client company.

Your right to receive remuneration could be revoked until 31 December 2011 if you had agreed to short-time work and if you received short-time work benefits in accordance with volume three of the Social Security Code (Sozialgesetzbuch III).

7. You are not required to work for a client company that is directly affected by a **labour dispute**. In such cases your agency must inform you that you have the right to refuse your job performance and not to work for that client company.

B. Principle of equal treatment with employees of the client company; exemptions

1. For the duration of your assignment to a client company, you have a right to the

basic working conditions (such as working hours, annual leave, etc.) and pay of a comparable employee of that client company.² You can request information about the basic working conditions and remuneration from the client business. Agreements made to the contrary are not valid.

2. Deviations from this principle of equal treatment will only be allowed in the following case:

A collective labour agreement that regulates basic working conditions is applied to your temporary agency work relationship. On the one hand, such a collective labour agreement should be used if a trade union concluded a collective labour agreement with an employer's association and you are a member of that union and your employer is a member of the concerned employer's association. On the other hand, the employment contract between you and your agency can also agree on the application of a specific collective labour agreement.

The rules are different if you are assigned to work for a client company that you have already worked for during the last six months before your agency has assigned you to that client company as an agency worker. This also applies to your agency, which forms a corporation with this client company. In such cases your agency is required to ensure compliance with the principle of equal treatment.

C. Minimum wage

² Cf. Section 3 Paragraph 1 Number 3 and Section 9 Number 2 of the Temporary Employment Act [AÜG]

Your agency is obliged to pay you a gross wage per hour worked (minimum hourly wage) of at least the sum given below:

1. From 1 January 2012 to 31 October 2012

a) in the German states of Berlin, Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia

€7.01

b) in the remaining German states

€7.89

2. From 1 November 2012 to 31 October 2013

a) in the German states of Berlin, Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia

€7.50

b) in the remaining German states

€8.19

You must be paid at least the minimum hourly wage valid at your working place. If you are placed on an external assignment and the minimum hourly wage in the place you have been employed is higher than that in the place you have been assigned to, you are entitled to this higher rate.

You are entitled to be paid this minimum hourly wage by the latest on the 15th banking day (place of reference is Frankfurt am Main, Germany) following the month, for which the minimum hourly wage is to be paid.

This does not apply to hours worked beyond the regular monthly hours if a collective labour agreement on flexible

working hours including a working time account has been established. The number of credit hours in this working time account should not exceed 200, or 230 in exceptional cases due to seasonal fluctuations. Should you collect more than 150 credit hours on your working time account, your employer must protect any credit hours beyond these and the social insurance contributions relating to them against bankruptcy. Your employer must provide you with evidence that this protection exists. Until you have this evidence, you may have no more than 150 credit hours on your working time account.

D. Social insurance

Like any other employer, your agency is required to pay social insurance contributions. If your employer does not meet this obligation, the client company will be held liable for terms of assignment to a client.³

E. Occupational safety and accident prevention

Your work for the client company is subject to the public provisions of occupational health and safety law, which must also be complied with at the worksite of the client company. Agency and client company are both responsible for complying with these provisions. The client company must also take the accident prevention measures required by law. You are obliged to comply with the relevant provisions.

In addition, the client company must inform you of the following items,

³ Cf. Section 28e Paragraph 2 of the German Social Code [SGB] IV

particularly before the assignment begins and when changes occur in the workplace:

1. Health and safety hazards that you may be exposed to at work as well as any preventative measures and equipment,
2. the need for special qualifications, vocational skills or a specific doctor's supervision
3. unusual or serious hazards at the workplace.

F. Your obligation to register as a jobseeker in good time⁴

You are obliged to personally register as a jobseeker with your public employment agency at least three months before your contractual relationship with the agency is due to end. If you are informed of the end of the contractual relationship less than three months beforehand, you must register as a jobseeker within three days after you are informed.

It is sufficient to inform your public employment agency of the termination of employment either online at www.arbeitsagentur.de or by telephone within the time limits given above and to make an appointment to register as a jobseeker in person.

Your obligation to register as a jobseeker is not fully discharged until after you have attended the appointment with the public employment agency.

Please note that if you do not register in time you may be subject to a week's suspension of benefits. This means that

⁴ Cf. Section 38 Paragraph 1 of the German Social Code [SGB] III

despite your entitlement to unemployment benefit (*Arbeitslosengeld I*), the entitlement is suspended for one week and you will not receive benefits for this period.

G. The client company's obligation to provide information about job vacancies

The client company must inform you about vacancies that become available at its company. It can do this by hanging a notice in a place accessible to you in its place of business or the place of the undertaking of the client company.

H. Access to collective facilities and collective services

The client company must grant you access to all of the company's collective facilities and services, such as childcare facilities, cafeterias and means of transportation. The same conditions must apply to your use of these facilities and services as to that of client company employees with comparable status. There can, however, be objective reasons that justify different treatment. One such reason might be if you are only employed with the client company for a short time and granting you access to collective facilities and services would create a disproportionate administrative burden.

I. Who can help with disputes or questions?

The labour courts are responsible for adjudicating any disputes arising from the employment contract between you and the

agency. You can obtain further information from employee and employer associations, lawyers, and from the regional offices of the Federal Employment Agency in charge of monitoring agencies.

If you are not sure whether the employer has the necessary authorisation from the Federal Employment Agency, you can consult the relevant regional office.

Information (in German only) about temporary agency work is available on the following webpage:

www.arbeitsagentur.de > Unternehmen > Rechtsgrundlagen > Arbeitnehmerüberlassung