

Posting of Temporary Agency Workers in Europe Country Fact Sheet

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Date: 15th June, 2017

National Regulation and provisions applicable to posted temporary agency workers

I. Employment and Working Conditions for posted temporary agency workers coming into your country

If any of this information is not available or unclear in current legislation please indicate in the box. If you know of practical examples please give details below.

Element of national regulation	Qualitative information on your country
<p>Definition of a posted temporary agency worker according to national legislation and collective labour agreements in the TAW sector.</p> <p>Does a temporary agency worker posted into your country have the same legal status as a temporary agency worker employed directly? If not please explain.</p>	<p>The general definition for a temporary agency worker (cf. section 1 of the Temporary Employment Act- "Arbeitnehmerüberlassungsgesetz" or "AÜG") has been supplemented within the legal changes that came into force on 1st April, 2017. Pursuant to the general definition, a temporary agency worker is a worker who is assigned by his employer (the undertaking) to a third party (the user company) as part of his economic activities for the purposes of working. The new supplement provides that the temporary worker is integrated in the work organisation of the user company and is subject to their instructions. Furthermore, temporary employment in a chain is prohibited. Still, there is no specific definition for posted temporary agency workers.</p> <p>Yes, the specific regulations for German temporary agency workers also apply to posted temporary agency workers (cf. section 2 (4) of the German Posting of Workers Act ("Arbeitnehmerentsendegesetz" or "AEntG")). This also applies to the</p> <p>1. Labelling obligation (fines up to €1,000 for breaches) that came into force on 1st April, 2017:</p> <ul style="list-style-type: none"> - Agency-client contract must be named as temporary assignment contract - Temporary worker must be informed in text form that he is working as such - Obligation to name such person before assignment



	<p>2. Prohibition of temporary employment in a chain of assignments (fines up to €30,000 for breaches)</p> <p>3. Prohibition to assign temporary workers to client operation that are affected by a strike (fines up to €500,000 for breaches addressed to the client)</p> <p>In view of the general employment law regulations, it is necessary to check with any relevant regulation, whether it also needs to be applied to foreign temporary agency workers.</p>
<p>Relevant and applicable provisions on equal treatment & equal pay for temporary agency workers. Do these apply to posted temporary agency workers?</p>	<p>Yes, the equal treatment principle also applies to posted temporary agency workers (cf. section 2 (4) of the German Posting of Workers Act (AEntG), in conjunction with section 3 para. 1 (3), and section 8 (1) of the Temporary Employment Act (AÜG). However, it is possible to deviate from this principle by applying a collective labour agreement for the temporary work industry, provided that the minimum wage requirements are complied with. But in general, regarding equal pay, since 1st April, 2017, this deviation is only possible for the first nine months of assignment. After nine months of assignment a deviation regarding equal pay is possible, if a CLA on sector-specific supplemental payment applies up to the maximum length of assignment (18 months; possibly longer if stated in CLA of client industry or on basis of such a CLA through works agreement of a client operation). Moreover, a deviation is possible by applying a foreign collective labour agreement, provided that the collective labour agreements system of that Member State is comparable to the German one (the so called comparability check). However, collective labour agreements which do not contain any legally enforceable rights must not be accepted. Otherwise, in case of breaches of equal pay after nine months of assignment, fines up to €500,000 and licence withdrawal are possible.</p>
<p>Maximum work periods per day and per week for posted temporary agency workers. Is night work permitted for posted temporary agency workers? If so how many hours are allowed?</p>	<p>The Working Time Act (ArbZG) applies (cf. section 2 (3) of the Posting of Workers Act (AEntG)).</p> <p>As a rule posted temporary agency workers may work <i>up to 8 hours per working day</i> (Mo - Sat). In <i>exceptional cases</i>, however, a <i>daily workload of 10 hours is permissible</i>, provided that over the course of six months or 24 weeks the average daily working time is no more than 8 hours (section 3 Working Time Act (ArbZG)). Night work is permissible, but must not exceed 8 hours (section 6 para. 2 (1) Working Time Act). However, again, in exceptional cases, a daily workload of 10 hours is permissible, provided that over the course of six months or 24 weeks the average daily working time is no more than 8 hours (section 6 para. 2 sentence 2 Working Time Act).</p>
<p>Minimum rest periods per day and per week for posted temporary agency workers.</p>	<p>The Working Time Act applies (cf. section 2 (3) of the Posting of Workers Act (AEntG))</p> <p>1. Breaks</p> <p>During working times, there must be a break of at least 30 minutes, if working hours total between six and nine hours, and of at least 45 minutes, if working hours total more than nine hours. Breaks may be subdivided into periods of at least 15 minutes each (section 4 sentence 2 of the Working Time Act)</p>



	<p>(ArbZG)). Workers must not be employed for longer than 6 hours at a time, without a break (section 4 sentence 3 Working Time Act (ArbZG)).</p> <p>2. Rest periods After completion of the daily working time, a <i>recuperation period of 11 hours is required</i> (section 5 para. 1 Working Time Act (ArbZG)). The duration of the recuperation period may be shortened by up to an hour in hospitals and other institutions providing care and treatment of persons, as well as in restaurants and other places providing food and drink or accommodation, in transport companies, in broadcasting, as well as in agriculture and animal husbandry, provided that each such shortening is compensated within a calendar month or within 4 weeks by extending another recuperation period to at least 12 hours (section 5 para. 2 Working Time Act (ArbZG)).</p> <p>In hospitals and other institutions providing care and treatment of persons, it is also possible to shorten the recuperation periods by calling on workers while they are on call, such on-call periods, however, must not make up more than half of the recuperation period, and this can be compensated at other times (section 5 para.3 Working Time Act (ArbZG)).</p> <p>3. Rest on Sundays and public holidays <i>Workers are generally entitled to have Sundays and public holidays off</i> (sections 1 (2), 9 para.1 Working Time Act (ArbZG)). However, in exceptions it is possible to deviate from this, provided that the conditions of sections 10 ff. of the Working Time Act (ArbZG) are met.</p>
<p>Applicable minimum rates of pay hourly, weekly or monthly. Is this decided by a collective agreement or by law? How is it enforced?</p>	<p>The Second Regulation on a minimum wage level regarding temporary agency work was applicable until 31st December, 2016. Since 1st January 2017 until 31st May, 2017 the general minimum wage of € 8.84 is applicable in Germany. On 5th April, 2017 a draft of the Third Regulation on a minimum wage level regarding temporary agency work was published in the Federal Gazette which came into force on 1st June, 2017 running to 31st December, 2019. Consequently, from 1st Juni, 2017 until 31st. March, 2018 temporary agency workers will be entitled to minimum hourly rates of €9.23 in West Germany and €8.91 in East Germany (including Berlin). Then, minimum hourly rates will be</p> <p><u>In West Germany:</u></p> <p>€9.49 from 1st April, 2018 to 31st March, 2019 €9.79 from 1st April, 2019 to 30th September, 2019 €9.96 from 1st October, 2019 to 31st December, 2019</p> <p><u>In East Germany (including Berlin):</u></p> <p>€9.27 from 1st April, 2018 to 31st December, 2018 €9.49 from 1st January, 2019 to 30th September, 2019 €9.66 from 1st October, 2019 to 31st December, 2019</p> <p>The minimum hourly rates and rules on working time accounts</p>



	<p>are governed by a legal provision (the so-called minimum wage for temporary worker working in Germany if bound or not bound to any collective labour agreement on temporary work). These rules will be set out in the Third Regulation of the Federal Ministry for Labour and Social Affairs (BMAS) based upon section 3a) of the Temporary Employment Act (AÜG).</p> <p>The customs administrations (Zollverwaltung) are responsible for monitoring and enforcing this pursuant to sections 17 para. 2, 17 (a) of the Temporary Employment Act (AÜG) in conjunction with the Law for combating illegal employment (“Schwarzarbeitsbekämpfungsgesetz” or “SchwarzArbG”).</p>
<p>Applicable wage supplements, sick pay, social security, overtime and night work rates & allowances for temporary agency workers.</p>	<p>1. Sick pay Posted temporary agency workers have a statutory entitlement to continued payment in the event of their getting sick pursuant to the continued remuneration law (“Entgeltfortzahlungsgesetz” or “EntFG”).</p> <p>2. Social Security The social security of foreign temporary agency workers who are not posted to Germany but who are employed directly in Germany is generally governed by the statutory provisions in force in Germany (section 3 of the 4th book of the German Social Code). According to this, temporary agency workers have unemployment-, health-, care-, accident-, and pension insurance.</p> <p>Where the following conditions are met, the social security regulations of the country of origin apply (section 5 para. 1 of the German Social Code, book IV and article 12 of the Regulation (EC) No 883/2004):</p> <ul style="list-style-type: none"> • the anticipated duration of the posting is up to 24 months • the relationship between the employer and employee under employment law remains • usual activity by the employer in the state of establishment • no replacement of another person <p>Where the worker is engaged specifically for the purpose of being posted, then it will depend on which legal provisions were applicable immediately prior to the posting (REGULATION (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems).</p> <p>3. Overtime payments There is no statutory provision governing payment of overtime. Only collective labour agreements which have been declared to be universally applicable occasionally contain such provisions.</p> <p>The amount of the overtime bonus is governed by the applicable collective labour agreements.</p> <p>The determination of whether overtime worked is to be classified as overtime which attracts a bonus will depend on whether the</p>



	<p>relevant working time for the employment in question has been exceeded.</p>
<p>Applicable provisions and legislations on health & safety at work. Whose responsibility is it to ensure these provisions/laws are enforced (user company or temporary agency)? Which organisation is responsible for the health and safety of the workers?</p>	<p>The provisions regarding health and safety in the workplace have to be applied (cf. section 2 (5) Posting of Workers Act (AEntG)). The undertaking and the customer operation are both jointly responsible and can be held liable to inform the temporary agency worker about potential dangers of the job, and to ensure that the temporary agency worker is employed in safe conditions (section 11 para. 6, sentence 1 of the Temporary Employment Act (AÜG)). The specific details of the work safety measures, however, shall be the responsibility of the customer operation (section 11 para. 6 Temporary Employment Act (AÜG)).</p> <p>The work safety authority (Arbeitsschutzbehörde), most commonly the commercial regulatory authority (Gewerbeaufsichtsamt), checks compliance with such provisions. In bigger businesses or businesses which have a high potential for risk, works doctors and safety specialists assist the employer in implementing safety at work and preventing accidents.</p>
<p>Minimum paid annual holiday (no. of days, rates) posted temporary agency workers are entitled to.</p>	<p>1. Holiday entitlement The holiday entitlement of a posted temporary agency worker is at least 24 workdays holiday, in the event of a six-day working week (cf. section 2 (2) of the Posting of Workers Act (AEntG) in conjunction with section 3 of the Federal Leave Act ("Bundesurlaubsgesetz" or "BUrlG")). In the case of a five-day working week, the holiday entitlement is 20 workdays.</p> <p>For the purposes of calculating the holiday entitlement for posted temporary agency workers, only that proportion is relevant which falls into the assignment period.</p> <p>In collective labour agreements of certain industries supplementary holidays are provided. For further information contact the custom administration.</p> <p>2. Holiday pay During the holidays there is an entitlement to holiday pay. This constitutes the minimum entitlement amount pursuant to the German Federal Leave Act (section 11 BUrlG), which temporary agency workers are also entitled to. Pursuant to this, the worker is entitled to holiday pay during their holidays, which is to be calculated on the basis of the average of their pay over the previous 13 weeks.</p> <p>3. Holiday bonus In collective labour agreements of certain industries <i>supplementary holiday bonuses</i> are provided. For further information contact the customs administrations.</p>
<p>Main, general provisions of collective labour agreements concluded in the TAW sector that are relevant to posted temporary agency workers</p>	<p>German collective labour agreements on temporary employment only apply to posted temporary agency workers if this is stipulated in the employment contract of the temporary agency worker. Otherwise either the equal treatment principle or a foreign collective labour agreement will apply. However, a foreign collective labour agreement must not stipulate wages that are below the legally binding minimum hourly rates of the temporary work in-</p>



	dustry (minimum wage) or, if this is not applicable, below the legal minimum wage (gross salary €8,84 per hour since 1 st January, 2017).
Specific provisions on posted temporary agency workers in the collective labour agreements in the TAW sector	There are no specific regulations for posted temporary agency workers.

II. Conditions for temporary work agencies to post a temporary agency worker in your country

Element of national regulation	Qualitative information on your country
Requirement to obtain a license	Yes. The licence is issued by the regional office of the German Federal Employment Agency (Bundesagentur für Arbeit). A written application is obligatory. The geographical competence is based on the location of the registered office. There are special rules governing the competence for companies with foreign registered office.
Requirement to establish in the receiving country	No
Mandatory Declarations	<p>1. Notification of the posting state's social security institution Prior to a posting the undertaking must inform the competent social security institution of the sending state, which shall issue an A 1 certificate. This certificate will show which social security law is applicable.</p> <p>2. Registration and insurance in Germany Prior to a posting, German client companies which employ posted temporary agency workers are required to notify the customs authority online using the minimum wage registration website: www.meldeportal-mindestlohn.de</p> <p>Such a registration needs to be in German. The undertakings are required to provide the client company with a written assurance, that the minimum hourly pay provided for (= the minimum wage at least), is paid. Forms for such assurances are available on the minimum wage registration website (in English, French and German): www.meldeportal-mindestlohn.de</p> <p>The German client company shall include this assurance with its registration (cf. section 17b of the Temporary Employment Act (AÜG) and section 18 of the Posting of Workers Act (AEntG). The following details must be supplied in the written application:</p> <ul style="list-style-type: none"> • Surnames, given names and dates of birth of the temporary agency workers, • Start and duration of the assignment,



	<ul style="list-style-type: none"> • Place of employment, • Location in Germany where the records regarding the start and finishing times as well as the duration of the daily working times of the temporary agency worker are kept, • The surname, given name and German address of a person authorised to receive service for the undertaking, • The industry in which the posted worker is to work and • The surname, given name or company name, as well as the address of the undertaking of the client company. <p><u>3. Duty to keep records</u> Furthermore, the German client company is required to record the starting and finishing times as well as the daily working time of the temporary agency worker, and must retain these records for a minimum of two years.</p> <p>The undertaking is required to keep the documentation (in German) which is necessary for checking that the minimum wage requirements are met in Germany for the entire duration of the current employment of the temporary agency worker, although no longer than two years in total (cf. section 17c of the German Temporary Employment Act, AÜG).</p>
Sectoral bans for temporary agency work activities	<p>There is a general prohibition on assignments into the <i>main construction industry</i> (section 1b, 1st sentence of the AÜG). Temporary agency worker may only exceptionally be assigned between construction and other businesses for workers' activities, and only if the collective labour agreements which govern these businesses stipulate this (section 1b 2nd sentence, lit. a of the Temporary Employment Act, AÜG).</p> <p>Assignments between construction businesses are also permissible if the assigning business can show that it has been covered by the same framework and social security benefits office collective labour agreements or by their general applicability for at least three years (section 1b 2nd sentence, lit. b of the AÜG). Moreover, an assignment of workers is also permitted for construction businesses with their registered office in another member state of the European Economic Area, provided that they are not subject to German framework agreements and social security benefits office collective labour agreements or collective labour agreements which have been declared to be universally applicable, but can show that for at least the last three years they have been mainly carrying on activities, which are covered by the same framework and social security benefits office collective labour agreements as also cover the business of the assignor (section 1b 3rd sentence of the Temporary Employment Act, AÜG).</p> <p>A further restriction is found in the collective labour agreement of the metal and electronics industry. Pursuant to this, an</p>



	assignment to businesses of the metal and electronics industry which are covered by collective labour agreements is only possible, if the employment of the temporary agency worker is governed by a collective labour agreement entered into with the Collective Bargaining Association of the German Trade Union Confederation (DGB) or with the IG Metall pursuant section 5.3 TV LeiZ.
Applicable reasons for use of temporary agency work services	None, but some collective labour agreements of the user companies/sectors contain restrictions.
Applicable minimum and maximum length of temporary agency work assignments	There is no minimum length of assignment applicable. However, since 1 st April, 2017, a maximum length of assignment of 18 months is applicable. Deviation is possible based on a CLA of the client industry or on the basis of such a CLA through works agreement of a client operation. For the metal and electronics industry in North-Rhine Westphalia e.g. the CLA "TV LeiZ" states a maximum length of assignment for temporary agency workers of 48 months.
Restrictions on labour contracts to be offered to posted temporary agency workers	Employment contracts in Germany can only be <i>limited to a fixed term of up to two years</i> , unless there is an objective reason justifying a limitation. <i>Within those two years it is possible to extend the contract up to three times</i> . In the event that a fixed term employment is to exceed the period of two years, then any such fixed term must be justified by giving an objective reason. This also applies to workers who were employed by the same employer during the <i>preceding three years</i> (cf. section 14 Act on Part-Time Work and Fixed-Term Employment Contracts ("Teilzeit- und Befristungsgesetz" or "TzBfG"), judgment of the Federal Employment Court (BAG) dated the 6th of April 2011, -7 AZR 716/09). Exceptions from limiting fixed term contracts to a maximum of two years without reason are governed at section 14 paragraph 2a and 3 of the Act on Part-Time Work and Fixed-Term Employment Contracts (TzBfG). These provisions apply to all employment contracts. They do not constitute special features for temporary work.
Which services (if any) do you provide for the posted temporary agency workers? Are these workers charged any fees for these services?	There are no specific services provided by the industry.

Additional Information – Useful public sources

Do you know the country of origin of the posted temporary agency workers in your country/organization? If so please give details.	There are some statistics of the Federal Government disclosed in an answer to the parliamentary group of the Greens from December 2014. For more details pls see the link to the printed answer (German Parliament/Deutscher Bundestag) below. In total, 3700 foreign temporary agency workers from EU member states or EWR countries were posted to Germany in 2010. The most important countries of origin insofar were Poland 2773 posted temporary workers Hungary 323 posted temporary workers
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	<p>Collecting specific data of the origin of posted temporary agency workers was stopped in Germany after 2010 due to EU social security regulations.</p> <p>For further and more detailed information follow page 37 of the document:</p> <p>http://dipbt.bundestag.de/doc/btd/18/035/1803520.pdf</p>
Useful websites (Labour inspectorate, Ministry of Labour, Trade Union information etc...)	<p>www.zoll.de www.arbeitsagentur.de www.bmas.de www.dgb.de</p>
Contact people from the national social partner associations in the TAW sector	<p>1. Employers' Association Bundesarbeitgeberverband der Personaldienstleister (BAP) (Federal Employers' Association of Staffing Services) Universitätsstraße 2- 3a 10117 Berlin Telephone +49 30 20 60 98-50 +49 30 206098-70 E-Mail recht@personaldienstleister.de</p> <p>2. Union Deutscher Gewerkschaftsbund (DGB) (German Trade Union Confederation) Bundesvorstand Henriette-Herz-Platz 2 10178 Berlin phone +49 30 240 60-0 +49 30 240 60-324 E-Mail info.bvv@dgb.de</p>
Relevant publications	<p>http://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/foreign-domiciled-employers-posting_node.html http://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen/a806-beschaeftigung-entsendung-unionsbuerger-englisch.pdf?__blob=publicationFile</p>

If you have any questions on this factsheet, please contact the European Sectoral Social Partners:

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