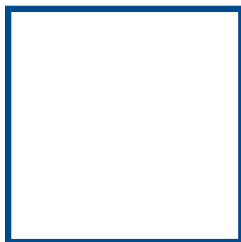


Leaflet for loaned workers

Englische Übersetzung des Merkblatts der Bundesagentur
für Arbeit für Leiharbeiter und Leiharbeiterinnen
(Stand: 10/2021)



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.

This leaflet contains the main contents of the Act for the Leasing of Workers for Temporary Employment (AÜG) and reflects the legal opinion of the Federal Agency for Employment. The following explanations cannot replace legal counsel in a specific case.

You are deemed a loaned worker if you are loaned by your employer (loaner) to a third party (borrower) to render work. You are loaned when you are integrated into the working organisation of the borrower and subject to its instructions.

If you do not hold German citizenship, you may demand from the loaner that it provides you with this leaflet and the written proof of the fundamental working conditions (see annex) in your mother tongue free of charge.

You can find the respective current valid leaflet version on the internet: www.arbeitsagentur.de > Unternehmen > Downloads.

Employment relationship

A.

Your employer (loaner) must hold **permission** from the Federal Agency for Employment to lease workers. Your contract of employment is not effective if your employer does not hold permission and the exceptions from the duty to hold permission do not apply. In this case, an employment relationship exists between you and the borrower. You have the option of retaining the employment relationship with your employer. To this end, you must declare in writing within one month to the loaner or borrower that you want to retain the contract of employment with the loaner (so-called declaration of retention). In the process, observe the following:

Initially, you must present your written declaration in person to an Agency for Employment, allow your identity to be established there and have this noted on your letter. You must then present this declaration to your employer or borrower within 3 days. The declaration of retention does not legalise the unlawful worker leasing either for the past or for the future. The leasing shall cease immediately.

If its permission becomes obsolete in the course of the employment relationship, the loaner must inform you of such immediately. The loaner must inform you of when the wind-up period is due to end. The deadline to wind up the contract must not exceed 12 months. The wind-up period is deemed the maximum period remaining to the loaner to realise the contracts already concluded with the borrower.

The loaner may lease you only if the loaner is your employer. The loaner must inform you before each leasing to a borrower that you will be operating as a loaned worker.

The **proof of fundamental contractual conditions** of the loaned employment relationship is based on § 11 section 1 AÜG and the provisions of the German Act on the Proof of Substantial Conditions Applicable to Employment Relationships. The loaner (employer) is duty bound no later than one month following the commencement of the employment relationship to lay down the fundamental contractual conditions and contents of the loaned employment relationship in writing, sign such and hand over such to you. The written proof must contain at least the following information:

- your name and address, as well as the name and address of the loaner,
- the date on which the employment relationship commences,
- for time-limited employment relationships: the expected duration of the employment relationship,
- the working location or, if you are not due to be working at a specific working location, an indication that you are due to be employed peripatetically,
- a short description of your work,
- the composition, level and due nature of the work remuneration, including the supplements, allowances, bonuses and special payments as well as other components of the work remuneration,
- the agreed weekly and/or monthly working time,
- the number of holiday days,
- mutual termination periods of the employment relationship,
- a general reference to the collective bargaining agreements (CBAs), company or service agreements applying to the employment relationship,
- the permission-granting authority as well as the location and date on which the permission is granted according to § 1 AÜG,
- type and level of payments for periods in which you are not loaned.

In principle, you must not be leased to the same borrower for more than 18 months¹ (**maximum leasing duration**). To ensure that your employer does not exceed the maximum leasing duration, it must take into account your prior deployments at the same borrower even for other loaners if the periods between the deployments do not exceed 3 months in each case. A CBA in the deployment industry or – in the area of validity of such a CBA – a company or service agreement in the deployment business may deviate from the maximum leasing duration of 18 months.

If the maximum leasing duration is exceeded, the employment relationship with your employer is not effective and an employment relationship arises between you and the borrower. You have the option of retaining the employment relationship with your employer (loaner). To this end, you need to submit the declaration of retention described under A., 1st paragraph.

If you are due to be deployed as a **loaned worker in the meat industry**, this has been banned in principle in the core business, that is: slaughtering, cutting and processing meat, since 1 April 2021. In these areas, companies are now allowed to deploy their own employees only.

- An exception applies for **meat processing**: the deployment of loaned workers remains permitted here on a time-limited basis until 31 March 2024 if there is a relevant CBA agreement in a tightly limited scope and under special conditions.
- Your deployment must not exceed 4 months.
- The duration of prior leasing by the same or different loaner to the same borrower shall be credited in full if the periods between the deployments do not exceed 6 months in each case.
- Starting from the 1st day of your deployment, you absolutely must be subject to the same fundamental working conditions (see under B.) as for the core staff. This must not be deviated from, even by a CBA.

¹ In calculating the period, only leasing periods undertaken since 1 April 2017 are dispositive.

The restriction to the deployment of third-party staff described above does not apply to butchery businesses.

The contract between your employer and the borrower must be denoted expressly as worker leasing (so-called **disclosure**). Additionally, your employer and the borrower must state your name in the leasing contract or by referring to this contract (so-called **concretisation**) before your deployment. If these duties are not fulfilled, this has an effect on your employment relationship. The employment relationship with your employer is then not effective and an employment relationship then arises between you and the borrower. In this case, you also have the option of retaining the employment relationship with your employer (loaner). To this end, you need to submit the declaration of retention described under A., 1st paragraph.

In principle, you are entitled to be reimbursed with expenditure (e.g. travel and overnight stay costs) if you are deployed externally. For example, you shall be reimbursed with the travel costs for the journeys between the loaner's premises and the borrower's premises². However, regulations deviating from this may be agreed by a CBA or individual contract. Whether and, if applicable, to which extent this spending can also be reimbursed by the tax office depends on the tax law-related regulations, which shall be observed in each individual case.

The participation rights of employee representations (works councils, personnel councils) according to the Company Constitution Act and/or the Personnel Representation Acts of the German Confederation and the states, as well as the rights of the loaners and their employees, shall be observed.

Once your loan employment relationship has ceased, the loaner is not allowed to ban you from entering an employment relationship with the borrower. If such a ban is contained in your agreement with the loaner or in the agreement between the loaner and the borrower, it is not effective.

The loaner shall pay the agreed work remuneration to you even if the loaner cannot employ you with a borrower.

You are not duty bound to work for a borrower if this is directly affected by an employment dispute (strike). In the event of such an employment dispute, the loaner must draw your attention to this and inform you that you have the right to refuse to work and do not have to work for this borrower. The borrower is not allowed to allow you to work in its business if the business is directly affected by an employment dispute. By way of exception, you may be deployed in a business subject to strike action if the borrower ensures that you are not being deployed as strike breaker.

² cf. § 670 of the German Civil Code (BGB)

Principle of equality

B.

For the period in which you work for the borrower, you are generally entitled to the fundamental employment conditions (such as working time, holiday, etc.) including the work remuneration as would apply to a comparable employee in the borrower's business from the first day of leasing onwards (principle of equality)³. You may demand information about the fundamental employment conditions and the work remuneration from your borrower.

This principle of equality may be deviated from only in the following case: A CBA applies for your loan employment relationship governing the fundamental work conditions. Such a CBA shall apply if a CBA has been agreed 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 participating employers' association. On the other hand, it may be agreed in the contract of employment between you and your employer that a specific CBA applies.

You may be paid a lower work remuneration by way of or on account of a CBA in principle only in the first 9 months⁴ of leasing to a borrower. In calculating the leasing duration, your employer must include your prior deployments with the borrower in full, even for other loaners, if the period between each deployment is not greater than 3 months in each case.

Lower work remuneration deviating from that of a comparable employee in the borrower business may be paid to you for longer than 9 months if comparable work remuneration is laid down in a valid CBA, and it is laid down that you achieve this remuneration no later than after the 15th month of your leasing by incremental increases. The work remuneration must start to increase incrementally no later than after 6 weeks of deployment.

The situation is different if you are loaned to a borrower with whom you already were in a time-limited or time-unlimited employment relationship within the prior six months before your current leasing (**revolving door clause**). This applies also to a borrower forming a company group with your prior employer. In these cases, you are entitled to the same working conditions from the commencement as a comparable employee of the borrower business, including the paid remuneration.

³ cf. § 8 section 1 AÜG

⁴ Periods of leasing rendered since 1 April 2017 are dispositive for calculating this duration.

Wage lower limit and industry minimum wages



The Federal Ministry of Labour and Social Affairs (BMAS) has passed the Fourth Ordinance of a wage lower limit in employee leasing (LohnUGAÜV 4). The remuneration laid down by the BMAS in LohnUGAÜV (**minimum hourly remuneration**) overrides the statutory minimum wage if the former is greater. This means that your employer must pay you at least the remuneration determined in the legal ordinance. The same applies to potential subsequent ordinances to LohnUGAÜV 4.

If there is no wage lower limit ordinance for worker leasing, the stipulations of the Minimum Wage Act⁵ shall be observed. You are then entitled to the general statutory minimum wage.

According to LohnUGAÜV 4, the loaner is duty bound to pay to you at least the following listed gross remuneration per hour worked (minimum hourly remuneration):

- a) from 01/04/2021 until 31/03/2022
10.45 euros
- b) from 01/04/2022 until 31/12/2022
10.88 euros.

The gross remuneration applies to the entire territory of the Federal Republic of Germany.

You are entitled to be paid the minimum hourly remuneration no later than on the 15th bank working day (reference location is Frankfurt am Main) of the

month following the month for which the minimum hourly remuneration shall be paid.

This regulation does not apply to the working hours rendered above and beyond the regular monthly working time if there is a CBA regulation for working time flexibilisation (working time account). This working time account must not hold more than 200 credit hours; in a specific case of seasonal deviations, this may hold up to 230 credit hours. If you have more than 150 credit hours in your working time account, your borrower must secure against insolvency the credit hours extending beyond the 150 credit hours including the social insurance contributions arising from such. You may demand proof of this security. Without this proof, your working time account must not exceed 150 credit hours.

If your contractually agreed working time is less than 35 hours per week, the upper limit of the working time account is adjusted consistent with your working time.

On your request, hours in the working time account exceeding 105 credit hours will be paid out to you. For part-time workers, the number of credit hours shall be determined on a pro-rata basis according to the working time agreed in each contract of employment.

The entitlement to the wage lower limit is particularly protected.

The entitlement to a wage lower limit cannot be affected by exclusion or expiry periods envisaging the expiry of entitlements from the employment relationship by individual agreements or CBAs if the entitlement is not asserted within a certain period (e.g. 3 months). In these cases, the employer cannot refuse to pay remuneration at the level of the wage lower limit due to the exclusion or expiry period having elapsed. Exclusion or expiry periods in individual con-

⁵ You can find the current state of the above ordinances on minimum hourly remuneration at <https://www.bmas.de>.

tracts may on the whole be ineffective due to violation of the transparency requirement of § 307 section 1 sentence 2 German Civil Code if they do not exclude the entitlement to the wage lower limit. In this case, the employer is not able to refer to the exclusion or expiry period regarding wage entitlements in individual contracts which may extend beyond your entitlement to the lower wage limit.

If you assume tasks during your deployment with the borrower (e.g. building cleaner, painter and decorator, care work) for which currently a deviating industry minimum wage applies based on the German Posted Workers Act (AEntG), you are entitled to the minimum remuneration laid down there during your deployment according to § 8 section 3 AEntG. You can find an overview of the minimum remuneration according to this AEntG under the following link: [Minimum wages consistent with the German Posted Workers Act - version: 01/08/2021 \(bmas.de\)](https://www.bmas.de/DE/Themen/Arbeitsrecht/Mindestlohn/Mindestlohn.html)

Social insurance

D.

As your employer, the loaner is duty bound to pay the social insurance contributions as per other employers. If the employer does not meet this obligation, the borrower is liable for such in the event of a deployment.⁶

⁶ cf. § 28e section 2 fourth section German Social Code (SGB IV)

Occupational protection and accident prevention

E.

The public law regulations of occupational protection law apply to your work with the borrower; the borrower's business must also observe these. The loaner and borrower are responsible for adherence to these regulations. The borrower shall also implement the necessary accident prevention measures as dictated by law. You are duty bound to follow the relevant regulations.

The borrower shall moreover inform you, particularly before the employment commences and if alterations are made to its work area, about the following:

- safety and health hazards to which you may be exposed in the workplace,
- measures and devices to avert and protect against hazards, including occupational medicine precautions,
- necessity of special qualifications or professional skills as well as particular hazards in the working area and the measures that have been or shall be implemented.

Your duty to report as 'looking for work'⁷ on time

F.

If your employment relationship with the loaner ceases, you are duty bound to report as 'looking for work' with your Agency for Employment no later than three months in advance. If you find out about the cessation of employment later than three months in advance, you must report as looking for work no later than three days after you find out of such.

It is sufficient for you to inform your Agency for Employment within the stated periods, e.g. online (www.arbeitsagentur.de) or by telephone, that your employment relationship is due to cease.

Starting from 01/01/2022, your Agency for Employment will immediately offer you an initial conversation once you have reported that you are looking for work; this conversation will take place face to face or by video call.

Please bear in mind that you may be sanctioned for one week if you do not report on time. The onset of a sanction means that despite your entitlement to unemployment benefit, this entitlement is stayed and you do not receive any unemployment benefit for the week in which your entitlement is stayed.

⁷ cf. § 38 section 1 third section German Social Code (SGB III)

Borrower's duty to inform about free positions

G.

The borrower shall inform you about free positions to be filled in its business. This can take place, for instance, by way of a company noticeboard accessible to you at the borrower business or company site.

Access to communal facilities or communal services

H.

The borrower shall grant to you access to communal facilities or communal services of a business – for example childcare facilities, communal catering or transport services; this granting shall take place under the same conditions as for comparable employees in its business. However, there may be material reasons justifying differing treatment. There may be such a reason if you are employed with a borrower only for a short period and it would involve a relatively high amount of administration for the borrower to provide you with access to the communal facilities or communal services.

Who can help if there are disputes or questions?



The employment courts are responsible for deciding on disputes from the employment relationship between you and the loaner (employer). You can obtain more detailed information from trade unions and employers' associations, lawyers, as well as the Agencies for Employment responsible for monitoring the loaners in Düsseldorf, Kiel and Nuremberg.

If there is doubt as to whether the loaner holds the required permission of the Federal Agency for Employment, you may contact each responsible team for worker leasing in the Agencies for Employment in Düsseldorf, Kiel and Nuremberg. These teams, as well as any other Agency for Employment, will also accept and follow up tip-offs about legal violations by permission holders.

The three responsible teams for worker leasing can be reached using the following contact details:

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

The worker leasing teams are each responsible for permission holders of several German states. The team in the Düsseldorf Agency for Employment is responsible for the states of North Rhine-Westphalia and Hesse. The team in the Nuremberg Agency for Employment is responsible for the states of Bavaria, Baden-Wuerttemberg, Rhineland-Palatinate and Saarland. The team in the Kiel Agency for Employment is responsible for all remaining German states.