



# DECENT WORK CHECK

## **GERMANY** 2023

Iftikhar Ahmad

## WageIndicator Foundation - [www.wageindicator.org](http://www.wageindicator.org)

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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## Bibliographical information

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# INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental Principles and Rights at Work and Core ILO Conventions, are practised, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects deemed necessary in attaining “decent work”. The work makes the abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and scores the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Finally, workers can compare their personal score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

A Decent Work Check is beneficial both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also helpful for researchers, labour rights organisations conducting surveys on the situation of rights at work and the general public wanting to know more about the world of work. For example, WageIndicator teams worldwide have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed – being a worker, self-employed, employee, employer, policymaker, labour inspector – there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer), and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work, especially the effective enforcement of legislation in financially constrained states, a rise in precarious employment and analysing the impact of regulatory regimes.

In 2023, the team aims to include at least 12 more countries, thus taking the number of countries with a Decent Work Check to 125!

# MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR

1. Minimum Wage Law (Mindestlohngesetz), 11 August 2014 (BGBI I, 1348)
2. Collective Agreement Act (Tarifvertragsgesetz), 25 August 1969, as amended up to 11 August 2014 (BGBI. I, p. 1348)
3. Posting of Workers Act (Arbeitnehmerentsendegesetz), as of 20 April 2009 (BGBI. I, p. 799), as amended up to 11 August 2014 (BGBI. I, p. 1348)
4. Temporary Employment Act (Arbeitnehmerüberlassungsgesetz), as of 7 August 1972, as amended up to 2017 (BGBI I, p. 1348)
5. Act on the Determination of Minimum Working Conditions (Mindestarbeitsbedingungsgesetz), of 11 January 1952, as amended up to 22 April 2009 (BGBI. I, p. 818)–expiry 11 August 2014
6. Hours of Work Act (Arbeitszeitgesetz), of 6 June 1994, as amended to 20 April 2013 (BGBI. I, p. 868)
7. Law on notification of conditions governing an employment relationship (Nachweisgesetz), 20 July 1995, as amended up to 11 August 2014 (BGBI. I, p. 1348)"
8. Civil Code (Bürgerliches Gesetzbuch), Art. 611-630, 2002 (new version), as amended up to 22 July 2014 (BGBI. I, p. 1218)
9. Federal Holiday Act, (Bundesurlaubsgesetz), of 8 January 1963, as amended 20 April 2013 (BGBI I, p. 868)
10. Young Individuals' Protection in Employment Act (Jugendarbeitsschutzgesetz), of 12 April 1976, as amended up to 20 April 2013 (BGBI I, p. 868)
11. Maternity Protection Act (Mutterschutzgesetz), of 24 January 1952, as amended up to 23 October 2012 (BGBI I, p. 2246)
12. Minimum Annual Leave for Workers Act (Bundesurlaubsgesetz), of 8 January 1961, as amended up to 20 April 2013 (BGBI I, p. 868)
13. Public Holiday and Sick Pay Act (Entgeltfortzahlungsgesetz, also called Gesetz über die Zahlung des Arbeitsentgelts an Feiertagen und im Krankheitsfall), of 26 May 1994, as amended up to 21 July 2012 (BGBI I, p. 1601)
14. Protection against Dismissal Act [PADA] (Kündigungsschutzgesetz), 1969, as last amended 20 April 2013 (BGBI I, p. 868)
15. Part-Time and Fixed-Term Employment Act (Teilzeit- und Befristungsgesetz), November 2000, as amended up to 20 December 2011 (BGBI I, p. 2854)
16. Parental Allowance and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetz), of 5 December 2006, as amended up to 15 February 2013 (BGBI I, p. 254)

*The text in this document was last updated in December 2023. For the most recent and updated text on Employment & Labour Legislation in Germany in German, please refer to: <https://wageindicator.de/>*

17. Maternity Protection Act (Mutterschutzgesetz), of 24 January 1952, as amended up to 23 October 2012 (BGBI I, p. 2246)
18. Act on Family Care Leave (Familienpflegezeitgesetz), 6 December 2011 BGBI I, p. 2564
19. Act on Care Leave (Pflegezeitgesetz), 28 May 2008 (BGBI I, p. 874, 896)
20. National Insurance Regulation, (Reichsversicherungsordnung) of 19 July 1911, as amended to 23 March 2012 (BGBI I, p. 2246)
21. Employee Protection at Work Act (Arbeitsschutzgesetz), of 7 August 1996, last amended 19 October 2013 (BGBI I, p. 3836)
22. Occupational Safety Act (Arbeitssicherheitsgesetz), of 12 December 1973, as amended up to 20 April 2013 (BGBI I, p. 868)
23. General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz) of 14 August 2006, as amended up to 5 February 2009
24. Basic Law for the Federal Republic of Germany (Grundgesetz), of 23 May 1949, as amended up to 11 July 2012 (BGBI I, p. 1478)
25. Works Constitution Act (Betriebsverfassungsgesetz) in the version published on 25 September 2001 (BGBI I, p. 2518), last amended 20 April 2013 (BGBI I, p. 868)
26. Federal Personnel Representation Law (Bundespersönalvertretungsgesetz), of 15 March 1974, as amended up to 3 July 2013 (BGBI I, p. 1978)
27. Collective Agreement Act (Tarifvertragsgesetz), of 9 April 1949, as amended up to 11 August 2014 (BGBI I, p. 1348)
28. Co-determination Act (Mitbestimmungsgesetz), of 4 May 1976, as amended up to 22 December 2011 (BGBI I, p. 3044)

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# 01/13 WORK & WAGES

## **ILO Conventions**

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

**Germany has not ratified the Convention 95, 117 and 131.**

### ***Summary of Provisions under ILO Conventions***

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

## Regulations on work and wages:

- Minimum Wage Law (Mindestlohngesetz), 11 August 2014 (BGBl. I, 1348)
- Collective Agreement Act (Tarifvertragsgesetz), 25 August 1969, as amended up to 11 August 2014 (BGBl. I, p. 1348)
- Posting of Workers Act (Arbeitnehmerentsendegesetz), as of 20 April 2009 (BGBl. I, p. 799), as amended up to 11 August 2014 (BGBl. I, p. 1348)
- Temporary Employment Act (Arbeitnehmerüberlassungsgesetz), as of 7 August 1972, as amended up to 2017 (BGBl. I, p. 1348)
- Act on the Determination of Minimum Working Conditions (Mindestarbeitsbedingungsgesetz), of 11 January 1952, as amended up to 22 April 2009 (BGBl. I, p. 818)– expiry 11 August 2014
- Hours of Work Act (Arbeitszeitgesetz), of 6 June 1994, as amended to 20 April 2013 (BGBl. I, p. 868)
- Law on notification of conditions governing an employment relationship (Nachweisgesetz), 20 July 1995, as amended up to 11 August 2014 (BGBl. I, p. 1348)
- Civil Code (Bürgerliches Gesetzbuch), Art. 611-630, 2002 (new version), as amended up to 22 July 2014 (BGBl. I, p. 1218)

## Minimum Wage

Generally, there is no national statutory minimum wage in Germany at the moment, but in accordance to the reform, employers must pay minimum wages as from 1 January 2015 for nearly all employees in the

amount of €8.50 per hour – see the so-called minimum wage law (Mindestlohngesetz (MiLoG), 11 August 2014) (see Bundestag printed matter (Bundestags-Drucksache) 18/2010(neu) and Bundestag printed matter 18/1558). As of January 2019, the general minimum wage has been raised from €8.84 per hour to €9.19 per hour.

The minimum wage extends to the parties of collective agreements, but there are periods of transition (see § 24 MiLoG). Some exceptions exist for seasonal workers, youth, long-term unemployed, threshold workers and newspaper delivery person (see § 22 MiLoG). Often wages are determined by collective agreements. Separate minimum wages exist for temporary workers (§ 3a Temporary Employment Act) and posted-workers (Posting of Workers Act), which take precedence over the rules of Minimum Wage Law, if the minimum wage under Temporary Employment Act is not lower than the minimum wage of Minimum Wage Law (§ 1 III MiLoG).

Minimum wages may be extended also by government decree to a whole branch in form of generally binding collective agreement. A collective agreement may be extended on the request of at least one party to the collective agreement to employees and employers who are covered by its scope but who are not members of the agreement concluding organizations, provided that a board of three representatives each of employers' and workers' umbrella organizations agrees. The agreement is extended yet in case that at least 50% of all employees are employed by employers bound by the collective agreement and it is considered to be in the public interest (see also Bundestag printed matter 147/14). Through reforms in 2014 from 1 January 2015 the 50%-quorum is not



necessary; from January 2015 a collective agreement can be extended at the joint request of the parties to collective agreements generally binding.

The Act on the Determination of Minimum Working Conditions, which yet provides the possibility to set minimum working conditions, including wages, for sectors which are not, or only to a minor extent, covered by collective agreements, to become inoperative by the so called Tarifautonomiestärkungsgesetz from 11 August 2014.

Wages agreed to between employers and employees that yet do not exceed two-thirds of the amount in the relevant bargaining agreement are deemed unfair and void; if this is the case, payments must be made according to the relevant bargaining agreement.

The Act on Minimum Pay does not apply to Amateurs in football and other sports, who receive pay for playing and its application on foreign truck drivers in transit operations in Germany has also been suspended.

Under the Minimum Wage Law, the minimum wage is adjusted in accordance with the resolutions of the Minimum Wage Commission, established under the Act. It is a bipartite body supported by the government with three members each from worker and employer groups. There are also two advisory (non-voting) members from scientific community (experts in the field). Members are appointed for a term of five years.

Violations of the Minimum Wage Law, i.e., not paying the wages or not paying the wages in time, is subject to the penalty of €500,000. There is also provision of

administrative fine of more than €2,500 which can result in exclusion from award of public sector contracts in future.

For further information also visit:

[http://www.boeckler.de/index\\_tariflicher\\_mindestlohn.htm#cont\\_17936](http://www.boeckler.de/index_tariflicher_mindestlohn.htm#cont_17936);  
<https://www.bmas.de/DE/Themen/Arbeitsrecht/Mindestlohn/mindestlohn.html>

**Source:** §1(III), 22 & 24 of the Minimum Wage Law; §5 Collective Agreement Act; §4 & 7 of the Posting of Workers Act; §15 of the Act on the Determination of Minimum Working Conditions

For updated wage rates, please refer to the section on minimum wage

## Regular Pay

In accordance with §614 of the Civil Code, remuneration is payable to the performance of services; is measured over a set remuneration periods, so it is payable after the expiry of each of the periods. Germany has no legislation concerning standard pay days in employment relationships however salaries are normally transferred into the employee's account in the middle of the month or at the end of the month as written in employment contract or in collective agreement.

Wages tax, solidarity surcharge and, where appropriate, church tax, and also employees' shares of contributions for social security insurance (healthcare and pensions insurance) and unemployment insurance are principally deducted from the agreed gross pay and transferred directly by the employer to the agencies responsible. Employer is required to inform the worker, through employment contract, the composition and amount of remuneration

including supplements, allowances, bonuses and special payments, as well as other components of pay and their due dates.

Under the Minimum Wage Law of 2014, employers are required to pay the worker the minimum wage on the agreed due date and at the latest on the last working day of the month that follows the month in which the work was performed (within 30 days of the due date). If no agreement has been reached between the parties on the due date of the payment of minimum wage, section 614 of the German Civil Code is applicable.

Under the Minimum Wage Law, companies that operate with subcontractors are liable for the payment of the statutory minimum wage by their subcontractors.

**Source:** §612, 614 of German Civil Code; § 2, 1, 6, 10 of Law on notification of conditions governing an employment relationship (Nachweisgesetz)

# 02/13 COMPENSATION

## **ILO Conventions**

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

**Germany has not ratified any of the above-mentioned Conventions.**

### ***Summary of Provisions under ILO Conventions***

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter time (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

## Regulations on compensation:

- Hours of Work Act (Arbeitszeitgesetz), of 6 June 1994, as amended to 20 April 2013 (BGBl. I, p. 868)
- Law on notification of conditions governing an employment relationship (Nachweisgesetz), 20 July 1995, as amended up to 11 August 2014 (BGBl. I, p. 1348)
- Civil Code (Bürgerliches Gesetzbuch), Art. 611-630, 2002 (new version), as amended up to 22 + July 2014 (BGBl. I, p. 1218)

## Overtime Compensation

The normal full-time-working hours are 8 hours a day. A 10-hour limit (including overtime) is permitted, provided an 8-hour average is maintained over a 6 month or 24-week period (60 hours per week, thus 12 hours of overtime). Collective agreements and under certain requirements, company (enterprise) agreements can specify a different reference period or can permit working hours to exceed 10 hours per day, provided that working time comprises a considerable amount of on-call or standby duty. It is possible to exceed these limits in emergencies and extraordinary circumstances where no other response is possible, particularly when there is a risk of the deterioration of raw materials or food or to profits, as well as for work that cannot be postponed, provided that 48 hours per week in average over a period of 12 months are not exceeded. Germany has no statutory regulations dealing explicitly with extra salary and specifying the rate for overtime work but collective agreements often regulate payments for overtime (to prohibition of overtime for pregnant women, see § 8 Maternity Protection Act). In

general, the employer has to pay for overtime work. In addition, many collective bargaining agreements provide for extra salary for overtime work and/or night work.

The Bridge Part-Time Work Law, applicable from January 2019, grants employees the right to work part-time for a period of one to five years (Part-Time-Period) and return to full-time on the expiry of part-time period. Employee is entitled to this right only if he/she has been working with the employer for more than 6 months and the employer employs more than 45 employees in Germany in total.

**Source:** §3, 7(1), 9(1) & 14 of the Hours of Work Act; § 612 of German Civil Code; <https://www.bmas.de/DE/Schwerpunkte/Brueckenteilzeit/Fragen-und-Antworten/faq-brueckenteilzeit.html>

## Night Work Compensation

Night work is work that comprises more than two hours of work during the night time (principally the period between 23:00 and 06:00). Collective agreements can define the night period as starting at a time between 22:00 and 24:00. Night workers are workers who normally perform night work as part of a rotating shift system or perform night work for at least 48 days per year (to prohibition of night work for pregnant women, see § 8 Maternity Protection Act). The daily working time for night workers principally cannot exceed 8 hours. This limit can be extended to a maximum of 10 hours, provided average daily hours do not exceed 8 hours over a period of 1 calendar month or 4 weeks. This reference period can be modified by a collective or, under certain requirements, enterprise agreement. The schedules of night workers must be designed in accordance with the results of

scientific research into their appropriate scheduling. Before the start of their employment and subsequently at regular intervals of no more than three years, night workers are entitled to a medical examination at the costs of the employer. Workers over the age of 50 are entitled to an annual medical examination. Compensation for night work is in accordance to the applicable collective agreement. If no rules on compensation exist in the applicable collective agreement, employers must grant night-workers an appropriate number of paid days-off to compensate for the hours worked during the night or an appropriate supplement over and above the gross wage due to them for the hours worked.

**Source:** §2(3), 6 & 7(1) of the Hours of Work Act

### Compensatory Holidays / Rest Days

Workers can be called on to work on Sundays where the work cannot be undertaken on other days of the week, in specified circumstances. Workers can also work in industry on Sundays where interrupting the production would require the employment of more workers than continuing it. The relevant government authority can also authorize the employment of workers on weekly rest days in specific circumstances. A compensatory rest day is granted to the worker for working on Sunday within a two-week period. In any case, there must be at least 15 Sundays per year free of work. A collective agreement and, under certain requirements, company or enterprise agreements can permit this number to be reduced to a minimum of 10 Sundays a year in specified sectors and jobs.

Workers can be called on to work on public holidays under the same circumstances as to work on Sundays. A worker who works on a public holiday that falls on a weekday is entitled to a compensatory rest day that must be granted within an eight-week period. The compensatory rest period must be granted to the worker immediately following a daily rest period, provided that no technical or organizational reasons stand in the way. Collective agreements can permit that, by agreement, the worker will not take a compensatory rest day or that he or she will be granted it within a different time period.

**Source:** 9-13 of the Hours of Work

### Weekend / Public Holiday Work Compensation

In German legislation, no payment at premium rates is found for working on weekend/public holiday. Procedure for extra pay, incentives, special payments and other components of the remuneration is determined by collective agreements or individual contracts. Usually work on weekend/public holidays is compensated by equivalent rest periods. But additional rates for work on public holidays are paid and these rates are free from tax.

**Source:** §3b of the Income Tax Act (Einkommensteuergesetz); Hours of Work Act, Public Holiday and Sick Pay Act; §2(I) Nr. 6 of Law on notification of conditions governing an employment relationship (Nachweisgesetz)

# 03/13 ANNUAL LEAVE & HOLIDAYS

## **ILO Conventions**

Convention 132 (1970) on Holidays with Pay Convention  
Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days.  
In addition, for several industries, different Conventions apply.

**Germany has ratified the Conventions 132 only.**

### ***Summary of Provisions under ILO Conventions***

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

## Regulations on annual leave and holidays:

- Federal Holiday Act, (Bundesurlaubsgesetz), of 8 January 1963, as amended 20 April 2013 (BGBl I, p. 868)
- Hours of Work Act (Arbeitszeitgesetz), of 6 June 1994, as amended up to 20 April 2013 (BGBl I, p. 868)
- Young Individuals' Protection in Employment Act (Jugendarbeitsschutzgesetz), of 12 April 1976, as amended up to 20 April 2013 (BGBl I, p. 868)
- Maternity Protection Act (Mutterschutzgesetz), of 24 January 1952, as amended up to 23 October 2012 (BGBl I, p. 2246)
- Minimum Annual Leave for Workers Act (Bundesurlaubsgesetz), of 8 January 1961, as amended up to 20 April 2013 (BGBl I, p. 868)
- Law on notification of conditions governing an employment relationship (Nachweisgesetz), 20 July 1995, as amended up to 11 August 2014 (BGBl I, p. 1348)
- Public Holiday and Sick Pay Act (Entgeltfortzahlungsgesetz, also called Gesetz über die Zahlung des Arbeitsentgelts an Feiertagen und im Krankheitsfall), of 26 May 1994, as amended up to 21 July 2012 (BGBl I, p. 1601)

## Paid Vacation / Annual Leave

Under the Federal Holiday Act (Bundesurlaubsgesetz), the minimum amount of paid vacation per calendar year is 24 working days (all calendar days that are not Sundays or public holidays) (§ 3 Federal Holiday Act). This number is based on a workweek of six days, and can be less

if the workweek is shorter than six days. Thus, for example, it is possible to grant 20 days of vacation based on a five-day workweek. Many collective bargaining agreements provide 30 days of vacation per year for a workweek of five days. It is also not uncommon to agree on that number in employment contracts. The payment during the vacations is the average wage earned over the 13 weeks preceding the leave period, excluding overtime pay. The annual leave for youths varies with their age. The paid vacation period for youth is: 30 working days if the worker is under 16 years of age; 27 working days if the worker is between 16 and 17 years of age; and 25 working days, if the worker is between 17 and 18 years of age (§ 19 German Youth Employment Protection Act). Young workers in underground mining are entitled to three additional days.

An employee must apply for vacation on a certain date and request approval from his or her employer. The law orders the employer to approve the request if there are no urgent operational reasons. Unused vacation claims have to be paid at termination if they cannot otherwise be used as leaves of absence during notice periods.

**Source:** §3 & 11 of the Federal Holiday Act; §19 of the German Youth Employment Protection Act

## Pay on Public Holidays

Public holidays are paid rest days of religious or memorial nature. In Germany, public holidays are predominantly regulated on state level. The minimum number of paid public holidays is nine – these are national public holidays.



The worker is entitled to the wages that would have been earned for working on that day. But the mandatory requirement is that work is not done on that day. It is a prerequisite for the payment of remuneration too that the holiday is the sole cause of the loss of work.

Workers who do not work on a public holiday without a valid reason are not entitled to be paid for the public holiday.

Employees are entitled to public holiday benefits for the following days: January 01 - New Year's Day (Neujahrstag) in all federal states; Epiphany (Heilige Drei Könige) in Baden-Wuerttemberg, Bavaria, Saxony-Anhalt; Good Friday (Karfreitag) in all federal states; Easter Monday (Ostermontag) in all federal states; May 01 - Labour Day (Maifeiertag) in all federal states; Ascension Day (Christi Himmelfahrt) in all federal states; Whit Monday (Pfingstmontag) in all federal states; Corpus Christi Day (Fronleichnam) in Baden-Wuerttemberg, Bavaria, Hesse, North Rhine-Westphalia, Rhineland-Palatinate, Saarland; Assumption Day (Maria Himmelfahrt) in Bavaria, Saarland, Day of German Unity (Tag der Deutschen Einheit) in all federal states; Reformation Day (Reformationstag) in Brandenburg, Mecklenburg-Pomerania, Saxony, Saxony-Anhalt, Thuringia; November 01 - All Saints Day (Allerheiligen) in Baden-Wuerttemberg, Bavaria, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Repentance Day (Buß- und Bettag) in Saxony, December 25 - Christmas (Weihnachtstag) in all federal states and December 26 - 2nd Christmas Day (Weihnachtstag) in all federal states.

**Source:** §2(1-3) Public Holiday and Sick Pay Act

## Weekly Rest Days

In Germany, workers are entitled to one 24 hours weekly rest day. In general, the rest day is Sunday (between 00:00 and 24:00), because it is not allowed for workers to work on Sunday or a public holiday. Rest on a Sunday must be granted to immediately follow a daily rest period, provided no technical or organizational reasons stand in the way. In multi-shift businesses with regular day and night shifts, the beginning or ending of the Sunday and public holiday rest period may be moved forward or backward by up to 6 hours, as long as the work stops for the 24 hours following the start of the rest period. For youths, 2 days weekly rest is mandatory. Youths may not work on Saturdays or Sundays, except in certain industries. Where they work on a Saturday, at least two Saturdays a month must remain free of work. Where they work on a Sunday, every second Sunday should, and two Sundays a month must remain free of work. Domestic workers can be called on to work on Sundays where the work cannot be undertaken on other days of the week. Pregnant and breastfeeding workers may not work on Sunday.

Workers are entitled to a rest break of at least 30 minutes in a 6-9-hour shift. The rest break extends to 45 minutes if the shift is greater than 9 hours. The rest break can also be divided up into breaks of at least 15 minutes. Workers cannot work for more than six consecutive hours without a break. The young workers are entitled to the rest break of at least 30 minutes in a 4-6-hour shift. The rest break is extended to 60 minutes for shifts of more than 6 hours.

Daily rest period has been specified as at least 11 hours. For young workers, the daily rest period is at least 12 hours.



The Part-Time and Fixed-Term Work Act has been amended to promote the part-time work and arrange standards for permissibility of fixed-term contracts and prohibits the discrimination against part-time and temporary workers. The employee who has worked for six months can apply for reducing working time. This law permits employee to specify the period between one to five years in which they can decrease their working hours. This is not applicable to small enterprise employing up to 45 workers.

**Source:** §1, 8 & 9 of Part-Time and Fixed-Term Work Act; §4, 7, 9(1-2), 10 & 11(1, 4) of the Hours of Work Act; §15-17 of the German Youth Employment Protection; §8 of the Maternity Protection Act

# 04/13 EMPLOYMENT SECURITY

## ILO Conventions

Convention 158 (1982) on employment termination

**Germany has not ratified the Convention 158.**

### *Summary of Provisions under ILO Convention*

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

## Regulations on employment security:

- Civil Code (Bürgerliches Gesetzbuch), Art. 611-630, 2002 (new version), as amended up to 22 July 2014 (BGBl. I, p. 1218)
- Protection against Dismissal Act [PADA] (Kündigungsschutzgesetz), 1969, as last amended 20 April 2013 (BGBl. I, p. 868)
- Law on notification of conditions governing an employment relationship (Nachweisgesetz), 20 July 1995, as amended up to 11 August 2014 (BGBl. I, p. 1348)
- Part-Time and Fixed-Term Employment Act (Teilzeit- und Befristungsgesetz), November 2000, as amended up to 20 December 2011 (BGBl. I, p. 2854)

## Written Employment Particulars

For an unlimited/indefinite term employment relationship, a written employment contract is not necessary between the parties. The employer is only obliged - latest after a month of the agreed start of employment - to hand over in writing to the employee the basic working conditions.

The transcript must include for instance the following information: Name and address of employer and employee; commencement date of work; if a fixed-term contract, the term of the employment relationship; place of service and, if the employee is required to travel, an indication that employment will take place at various locations; job type and brief job description; remuneration, including extra pay, incentives, special payments and other components of the remuneration and pay day; working hours; annual vacation; notice

periods for termination of employment and reference to collective bargaining agreements and other agreements between the employer and employees' representatives if applicable to the employment relationship.

Further conditions in the interest of parties especially concerning material benefits have to be provided in the employment contract. An employment contract is agreed for an indefinite period, by default, if the duration of employment is not explicitly defined or agreed in writing in the employment contract.

**Source:** §2(I) of Law on notification of conditions governing an employment relationship (Nachweisgesetz)

## Fixed Term Contracts

Fixed term contracts are permissible under German legislature. The legislation allows hiring fixed term contract workers for objective and material reasons. However, objective and material reasons are not required for the conclusion of a contract for a term not exceeding 2 years. Within this time frame, the contract can be renewed 3 times. For newly founded enterprises, this time limit is up to 4 years. Similarly, no justification is required for the conclusion of fixed-term contracts with employees over 52 years old, if they have been unemployed for four months before. If there is an objective reason for each successive contract, it can be principally renewed without any limitation. Fixed-term contracts must be drawn up in writing, which means that both parties of employment relationship have to sign the fixed-term contract. Otherwise the contract is ineffective. Result of an invalid fixed-term

contract is a permanent employment relationship.

The fixed-term contract should on the indication of the expiry date should include - like any employment contract - for instance the following information: Name and address of employer and employee; commencement date of work; place of service and, if the employee is required to travel, an indication that employment will take place at various locations; job type and brief job description; remuneration, including extra pay, incentives, special payments and other components of the remuneration and pay day; working hours; annual vacation; notice periods for termination of employment and reference to collective bargaining agreements and other agreements between the employer and employees' representatives if applicable to the employment relationship. Further conditions in the interest of parties especially concerning material benefits have to be provided in the employment contract. An employment contract is agreed for an indefinite period, by default, if the duration of employment is not explicitly defined or agreed in writing in the employment contract.

Under a 2017 reform of the Temporary Employment Act (referred to as Labour Leasing Act), temporary employees can be engaged through an agency for a maximum term of 18 months. The length of term depends on specific employees instead of being related to the workplace. An employee can be leased only for a maximum of 18 months in a workplace. However, if there is gap of three or more months between two assignments, an employee can be engaged by the same employer for a further term. After nine months, the employment conditions of temporary/leased employees must

correspond to those of permanent staff (some exceptions allowed for collective agreements). If the

Failure to comply with the maximum leasing term is punishable with fine of €30,000 for both the agency and the company engaging the leased employee.

**Source:** §14 & 16 Part-Time and Fixed-Term Employment Act; Temporary Employment Act

## Probation Period

An employment contract includes principally a probationary period for a maximum period of 6 months. During an agreed probationary period, the employment relationship may be terminated with a notice period of two weeks.

If a probationary period is agreed for a fixed-term employment relationship, this must be proportionate to the expected duration of the fixed-term contract and the nature of the activity. This means that a probationary period for short fixed-term employment relationships must also be comparably short.

**Source:** §622 (3) of German Civil Code; § 15 para. 3 TzBfG

## Notice Requirement

The employment relationship of a wage-earner or a salary-earner (employee) may be terminated with a notice period of four weeks to the fifteenth or to the end of a calendar month. For notice of termination by the employer, the notice period is as follows if the employment relationship in the business or the enterprise:

1. has lasted for two years, one month to the end of a calendar month,
2. has lasted for five years, two months to the end of a calendar month,
3. has lasted for eight years, three months to the end of a calendar month,
4. has lasted for ten years, four months to the end of a calendar month,
5. has lasted for twelve years, five months to the end of a calendar month,
6. has lasted for fifteen years, six months to the end of a calendar month,
7. has lasted for twenty years, seven months to the end of a calendar month.

In calculating the duration of employment, time periods prior to completion of the twenty-fifth year of life of the employee are taken into account (see EuGH C-555/07). Collective agreements may specify longer or shorter periods of notice, whereas individual contracts of employment may principally only specify longer periods of notice (exceptions see § 622 V Civil Code). Some groups of employees benefit from particular law protection against ordinary and extraordinary dismissal due to certain individual circumstances. These specially protected groups include disabled workers, pregnant women and works council members.

**Source:** §622-623 of German Civil Code; §15 of Protection against Dismissal Act, §85 & 91 Social Code IX

## Severance Pay

There is no general legal entitlement for severance payment in the case of termination of employment contract in

Germany. According to § 1a of PADA, an employee dismissed on the basis of urgent operational requirement or economic reasons could be entitled to severance pay, if the employer offers a severance payment in his dismissal. The severance payments have to be 0.5 monthly salary (15 days salary) for each year of employment. Employees are entitled to full wages during the notice period; the severance allowance is paid in addition. Employee is not entitled to severance allowance within the meaning of §1 PADA if the termination of employment agreement is based on the worker's conduct or capacity.

Beyond the possibility of § 1a of PADA, a lot of collective agreements contain entitlements for severance payments or the case of termination of employment for operational reasons.

**Source:** §1(a) of Protection against Dismissal Act (PADA)

# 05/13 FAMILY RESPONSIBILITIES

## **ILO Conventions**

Convention 156: Workers with Family Responsibilities Convention (1981) Recommendation 165: Workers with Family Responsibilities (1981)

**Germany has not ratified the Convention 156 and 165.**

### ***Summary of Provisions under ILO Convention***

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

## Regulations on family responsibilities:

- Parental Allowance and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetz), of 5 December 2006, as amended up to 15 February 2013 (BGBl I, p. 254)
- Maternity Protection Act (Mutterschutzgesetz), of 24 January 1952, as amended up to 23 October 2012 (BGBl I, p. 2246)
- Act on Family Care Leave (Familienpflegezeitgesetz), 6 December 2011 BGBl I, p. 2564
- Act on Care Leave (Pflegezeitgesetz), 28 May 2008 (BGBl I, p. 874, 896)
- Part-Time and Fixed-Term Employment Act (Teilzeit- und Befristungsgesetz), November 2000, as amended up to 20 December 2011 (BGBl I, p. 2854)

## Paternity Leave

In December 2022, the German Parliament voted to implement the draft law on EU Directive 2019/1158 on work-life balance. The proposal to include a 28-day paternity leave was rejected then. The new legislation, scheduled to take effect in 2024, stipulates 10 working days of paid paternity leave to the mother's partner immediately after the birth of the child.

Paid Paternity leave is not provided for in German legislation. Employers have no obligation to provide paid or unpaid leave to the new father following the birth of a child. But in Germany, there is paid maternity leave. Maternity allowance is paid by the statutory health insurance during the protection period before and after childbirth (usually 6 weeks before the birth and 8 weeks after delivery, in case of

premature or multiple births 12 weeks after childbirth) and for the day on which the child was born. The maternity allowance shall not exceed 13 Euros for the day. The employer has to pay the difference between the maternity benefit and the net wage.

**Source:** §13 & 14 of Maternity Protection Act

## Parental Leave

Workers are entitled to parental leave for their natural or adopted child. Under § 15 of the Federal Parents Education and Parents Allowance Act (Bundeselterngeld- und Elterngeldgesetz - BEEG) parents of a newborn child can claim up to three years of time off to take care of their child. This time off can be claimed by the mother and father simultaneously or individually. Employees who take time off under this Act are permitted to work up to 30 hours per week (i.e., part-time) during this period with either their current or another employer. The worker must not work during the parental leave, though they have the possibility to work in this time, but not more than 30 hours. The right to parental leave exists for each child, until he/she turns 3. The postnatal maternity leave period is counted against the maximum parental leave period. A part of the parental leave - up to 12 months - can be postponed with the employer's permission until the child's 8th birthday. Parental leave may be taken - also proportionally - by each parent (or otherwise entitled person) or by both parents (entitled person) at the same time.

Additionally, "Parental Allowance Plus", is also available for parents of children born on or after 1 July 2015. This allowance gives employees the right to receive the parental allowance from the government for a



period of up to 24 months or, if both parents decide to take parental leave, parental allowance can be shared between the parents for a period of up to 28 months.

During parental leave, but principally only for 12 months, state pays 67% of the average monthly income, up to a ceiling of € 1,800. This percentage is increased in case the person received an income of less than € 1,000. Parental allowance amounts to at least € 300. If both parents take parental leave, the state pays for 14 months.

**Source:** §1, 2, 12(2), 15(1-4) & 16 of the Parental Allowance and Parental Leave Act

## Flexible Work Option for Parents / Work-Life Balance

In case of sickness of a child, under 12 years of age, parents may take up to ten days of leave while receiving principally 70 percent of regular wage (so far it lies under the contribution calculation) from their insurer (for single insured, for a maximum of 20 working days).

The Act on Family Care Leave (Familienpflegezeit) (family caring time) permits employees, for a period of up to two years, under higher salary to reduce their working time to a minimum of 15 hours per week, if they need to care for a dependent relative. Familienpflegezeit is yet not a legal entitlement, but an optional provision that is available if covered by an individual contract or collective agreement.

Beyond the Act on Family Care Leave, there is also the Act on Care Leave (Pflegezeitgesetz) application. The Act of Care Leave gives in enterprise with more than 15 people the claim to take for six months a time off or reduce working time to

supply care to dependent near relatives. In this case, if employees take the six-month time off, they do not get any salary or payments from state. Additionally, in all enterprises the Act of Care Leave gives the possibility to principally unpaid absence from work for 10 days to supply urgent care to dependent near relatives.

Actually, the Act on Family Care Leave and the Act on Care Leave are reformed in such way, that the both Acts are combined in one Act. Also, there should be from January 2015 a claim for Family Care Leave and an entitlement for paid 10 -day absence (see for these reforms Bundesrat printed matter 463/14).

In addition to the options described above § 8 Part-Time and Fixed-Term Employment Act gives under certain requirements the possibility to reduce working time for an unlimited time.

Amendment in Parental Allowance and Parental Leave Act (applicable from 1st Jan 2015) has extended the duration of the entitlement to parental allowances of parents working part-time. They can receive their parental allowances in payments of halved amounts while the number of months paid is doubled. Parents working simultaneously part-time between 25 and 30 hours per week whilst also taking parental leave for 4 months are entitled to additional parental allowances for these months ('partnership bonus').

In line with the amendment in the German Infection Protection Act (IfSG), there is a provision for extended compensation for the loss of earnings for those parents who have to care for their children (under 12 years) at home due to extended school or company vacations or the suspension of



physical presence in schools for reasons of infection prevention.

The amount of compensation is 67 percent of the net loss of earnings, however limited to a maximum amount of EUR 2016 per month. The compensation is granted for a maximum of 10 weeks per parent providing care. For single parents, compensation can be granted up to 20 weeks during school closure. The compensation is paid by the employer, later reimbursed by the Government.

**Source:** §45 & 47 of the Social Code V; §2 of the Act on Family Care Leave; §8 Part-Time and Fixed-Term Employment Act; Parental Allowance and Parental Leave Act

# 06/13 MATERNITY & WORK

## **ILO Conventions**

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

**Germany has not ratified the Conventions 103 and 183.**

### ***Summary of Provisions under ILO Convention***

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

## Regulations on maternity and work:

- Maternity Protection Act, (Mutterschutzgesetz), of 24 January 1952, as amended up to 23 October 2012 (BGBI I, p. 2246)
- National Insurance Regulation, (Reichsversicherungsordnung) of 19 July 1911, as amended to 23 March 2012 (BGBI I, p. 2246)
- Parental Allowance and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetz), of 5 December 2006, as amended up to 15 February 2013 (BGBI I, p. 254)

## Free Medical Care

Women who are members of a statutory health insurance scheme enjoy the following benefits during pregnancy and motherhood: medical care and midwife care; treatment with pharmaceuticals, bandages, and aids; hospital delivery; domestic care; and household help.

**Source:** §15 of the Maternity Protection Act; §197 of the National Insurance Regulation

## No Harmful Work

Employer is responsible to assess risks at the workplace and must take appropriate measures to protect the life and health of pregnant and nursing workers. Pregnant and nursing workers may not be engaged in arduous physical work; work involving exposure to biological, chemical and physical agents; work involving physical strain (prolonged periods of sitting, standing, exposure to extreme temperatures, vibration); night work period (between 20:00 and 06:00); in the overtime hours; and on rest days except under certain conditions.

A 2017 reform in the Maternity Protection Act grants employer's greater flexibility regarding the employee's working hours. The reform gives the women the chance to decide whether they want to work on Sundays and public holidays. An authorization by authorities is no longer required. Under the amendments, the existing ban on work on Sundays and public holidays is relaxed. With the worker's consent, work on Sundays and public holidays is possible to the same extent as permitted for other employees.

Though night work (between 20:00 and 06:00) is still prohibited, permission can be granted to employees to work until 22:00. The pregnant woman or the nursing mother must explicitly agree to work during those times and provide the employer with a clearance certificate (Unbedenklichkeitsbescheinigung) issued by a medical doctor. The medical certificate specifies that late work would not pose any risk to the pregnant woman or the unborn child.

Pregnant women and lactating mothers have a right to work before and after maternity leave. Employers are required to take necessary actions (reorganisation of workplace or change in the workplace) before declaring a ban on employment. If the employer cannot establish a safe working environment for the pregnant or lactating woman, a ban on employment may be imposed.

**Source:** §2(1-5), 4(1-5), 6(3), 8, 11(1) & 16 of the Maternity Protection Act; § 618 of Civil Code

## Maternity Leave

Women workers are entitled to a maternity leave of 14 weeks (6 weeks prenatal and 8

weeks postnatal leave). The postnatal leave may be extended to 12 weeks in the case of pre-mature birth or multiple births. In the case of death of a child, mother is allowed to return for work on her own request before the end of post-natal leave period but not until two weeks after delivery. The request by the worker must be supported by a medical statement that she is fit to work. Pregnant workers are allowed additional leave if a doctor provides a statement that the life or health of the mother or child would be endangered if work were continued. Women who, according to a medical statement, are not able to work to their full ability in the first months after delivery may not be re-engaged in work that exceeds their capacities.

When a woman worker gives birth to a child with disability, the post-natal leave is extended from 8 weeks to 12 weeks. This right is applicable as of 30 May 2017.

A 2017 reform in the Maternity Protection Act extends maternity protections and other related rights to persons in an employee-like relationship including managing directors, as well as to school pupils, students and interns. These rights are applicable from January 2018.

**Source:** §1, 3(1-2), 5(1-2) & 6(1-2) of the Maternity Protection Act

## Income

Women workers (even the unemployed) are entitled to maternity benefit. The maternity grant is paid for the 6-week prenatal leave period, for the day of delivery, and for the 8-week postnatal leave period (12 weeks for multiple and premature births). Cash benefit is paid at the rate of 100% of the

average normal net wages over the last 3 months before the prenatal maternity leave period. Maternity leave benefits are usually paid by the mother's health insurance (no more than €13 per day) and the mother's employer, who covers the difference between the money provided by the health insurance and the mother's previous earnings.

**Source:** §3(1), 5(2), 11(1), 13(1-2), 14(1) of the Maternity Protection Act

## Protection from Dismissals

The dismissal of a worker during her pregnancy and until 4 months after delivery is not permitted if the employer was aware of the pregnancy or delivery at the time of the dismissal or was informed of the pregnancy or delivery within 2 weeks of the dismissal. Dismissal is however allowed during pregnancy if employer is able to prove that dismissal is unrelated to pregnancy. Similar protective provisions exist for parental leave.

Additionally, the dismissal of a worker during her or his parental leave is also principally prohibited. Employee cannot be terminated eight weeks before planned start of parental leave and during the leave period.

The protection against dismissal is extended to women workers who had a miscarriage after 12 weeks of pregnancy. The protection against dismissal is applicable for a period of 4 months regardless of the weight of foetus. This right is applicable as of 30 May 2017.

**Source:** §9(1-3) of the Maternity Protection Act; 18(1) of the Parental Allowance and Parental Leave Act

## Right to Return to Same Position

There is no provision in the law which provides a worker the right to return to same position after availing maternity/parental leave. However, it can be implied from protection from dismissal provisions that workers can return to same position after availing leave. § 15 V 2 of Parental Allowance and Parental Leave Act gives only the possibility to return after parental leave to the working time that was agreed before the start of the parental leave. But Art. 15 RL 2006/54/EG and § 5 EU-directive 2010/18/EG established the duty for EU-member-state to give the possibility to return to same or comparable position after availing maternity/parental leave. This takes place in the German case law relevant consideration, especially in the context of § 106 of Trade Regulation Act (Gewerbeordnung).

**Source:** §15(V)(2) of Parental Allowance and Parental Leave Act; §15 RL 2006/54/EG and; § 5 EU-directive 2010/18/EG; §106 of Trade Regulation Act (Gewerbeordnung)

## Breastfeeding/ Nursing Breaks

Nursing workers are entitled to breastfeeding breaks of at least 30 minutes twice a day, or 1 hour once a day. If a worker works for more than 8 hours during a day, the nursing breaks must be 45 minutes twice a day. See for the right of nursing for male employees EuGH C-104/09.

**Source:** §7(1-3) of the Maternity Protection Act

# 07/13 HEALTH & SAFETY

## **ILO Conventions**

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

**Germany has ratified the Convention 81 only.**

### ***Summary of Provisions under ILO Conventions***

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

## Regulations on health and safety:

- Employee Protection at Work Act (Arbeitsschutzgesetz), of 7 August 1996, last amended 19 October 2013 (BGBI I, p. 3836)
- Occupational Safety Act (Arbeitssicherheitsgesetz), of 12 December 1973, as amended up to 20 April 2013 (BGBI I, p. 868)
- Civil Code (Bürgerliches Gesetzbuch), Art. 611-630, 2002 (new version), as amended up to 22 July 2014 (BGBI. I, p. 1218)

## Employer Cares

An employer is obliged to take the necessary occupational safety measures considering the circumstances that affect the safety and health of employees at work. It is his responsibility to review the measures for their effectiveness and if necessary, to adapt the changing circumstances and improve the working conditions that best suits the health and safety of employees.

In order to protect the health and safety of all workers, employers are obliged to: implement measures in accordance with the legal regulations; work is to be designed such that a threat to life and physical/mental health must be avoided and the remaining risk is minimized; ensure that worker health and safety is not threatened by workplace, work procedures, equipment, etc.; eliminate hazards at their source; determine safe working procedures; measures of the state of technology, occupational medicine and hygiene and other sound knowledge must be considered; issue internal regulations and instructions to ensure occupational safety and health protection; give suitable

and necessary instructions to employees; assign employees to jobs respecting their health condition; direct or indirect gender acting arrangements are permitted only if this is imperative for biological reasons and implement measures that are necessary for first aid, firefighting and evacuation of workers in case of emergency. The employer must have the necessary documents according to the type of activities and the number of employees, showing the result of the risk assessment, occupational health and safety measures established by him and the results of his examination. In similar hazardous situation, it is sufficient if the documents contain summarized information. Discussion about the necessity of the so called “Antistressverordnung”; [http://www.bundestag.de/dokumente/textarchiv/2013/42845368\\_kw20\\_pa\\_arbeit\\_soziales/210870](http://www.bundestag.de/dokumente/textarchiv/2013/42845368_kw20_pa_arbeit_soziales/210870)

**Source:** §3-6, 10 & 12 of Employee Protection at Work Act; § 618 of Civil Code; Occupational Safety Act

## Free Protection

Employers are required to provide necessary safety equipment free of charge to the workers working in hazardous environment. A hazard could arise in particular by the design and establishment of the workplace; physical, chemical and biological agents; the design, selection and use of work equipment, in particular agents, machines, equipment and installations and to deal with it; the organization of work and production processes, workflows and working and their interaction; inadequate qualifications and training of employees; and mental stress at work.

Employers are also obliged to plan and



implement occupational safety measures to provide the necessary resources and take precautions to ensure that the necessary measures involved in all the activities of operational management structures are observed. The costs connected to the assurance of occupational safety and health protection are to be borne by the employer and cannot be transferred to the employee. Employees are required to use all assigned personal protective equipment according to the designated methods.

**Source:** §3(2-3), 5, 9 & 15(2) of Employee Protection at Work Act and Trade association rules for safety and health at work (BGR), for instance BGR Nr. 189 - Use of protective clothing

## Training

The employer should instruct employees about safety and health at work during working hours sufficiently and appropriately. The briefing includes instructions and explanations that are specifically geared to the workplace and the responsibilities of the employees. The training shall also include the changes in the task pane, the introduction of new work equipment and new technology available prior to commencement of employee's activities. The instruction must be adapted to the development of risk and repeated periodically if necessary. If the obligation is for temporary workers for the instruction, the instructor has to carry out the training, taking into account the qualifications and experience of persons who have been given to him to perform work. The other labour protection obligations of the lender shall remain unaffected.

The employer is also obliged to take precautions to ensure that all employees who are exposed to a significant risk or can

be are informed and aware of this risk as early as possible and suitable preventive measures must be taught. In the immediate substantial danger to their own safety or the safety of others, the employees must be able to take appropriate security measures and damage control even when the responsible manager is not available; while the knowledge of the employees and existing technical means are to be considered. The workers may not suffer from their actions, unless they have taken deliberately or through gross negligence any inappropriate measures. The employer must take measures that enable the employees in imminent serious danger to get to safe place by immediate abandonment of the workplace, so the workers may not be harmed.

**Source:** §9 & 12 of the Employee Protection at Work Act; § 618 of the Civil Code

## Labour Inspection System

Labour inspection is provided under the following laws in Germany:

- Social Code, Seventh Book – Accident Insurance (Sozialgesetzbuch VII), of 7 August 1998, as amended up to 30 July 2014 (BGBI I, p. 1311)
- Employee Protection at Work Act (Arbeitsschutzgesetz), of 7 August 1996, last amended 19 October 2013 (BGBI I, p. 3836)
- Joint health and safety strategy (Gemeinsame Deutsche Arbeitsschutzstrategie - GDA), see <http://www.gda-portal.de/de/Startseite.html>
- Occupational Safety Act (Arbeitssicherheitsgesetz), of 12 December 1973, as amended up to 20 April 2013 (BGBI I, p. 868)
- Trade association rules for safety and health at working (BGR)



- Act on the Federal Civil Service (Bundesbeamtengesetz), of 5 February 2009, as amended up to 28 August 2013 (BGBl I, p. 3386)
- Acts on Civil Service at State level (Landesbeamtengesetze) and so on.

Labour inspection in Germany at State level generally covers enforcement of occupational safety and health laws in relation to work places in the private and public sector. Labour inspectorates control legislation relating to working time, maternity protection, child labour, protection of adolescent workers, homework and so on. Moreover, they control technical safety of machinery and check the safety and health related aspects of new factory premises and installations within licensing procedures.

# 08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

## **ILO Conventions**

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

**Germany has ratified the Convention 102, 121 and 130.**

### ***Summary of Provisions under ILO Conventions***

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

## Regulations on sick leave & Employment Injury Benefits:

- Public Holiday and Sick Pay Act, (Entgeltfortzahlungsgesetz, also called Gesetz über die Zahlung des Arbeitsentgelts an Feiertagen und im Krankheitsfall), of 26 May 1994, as amended up to 21 July 2012 (BGBI I, p. 1601)

## Income

Germany requires employers to provide employees with six weeks of paid sick leave for each illness that result in incapacity to work. The sick pay leave is regulated under the Sick Pay Act (Entgeltfortzahlungsgesetz). Employees are required to inform their employer in due course if they are incapable of working and also how long such incapability may presumably last. If the work incapacity lasts for more than three calendar days, the employee has to present to the employer a medical certificate confirming the existence of the disability and its likely duration in no later than the next working day.

During the sick pay leave, the employee has an entitlement of 100 percent sick pay against the employer. Following six weeks of sick pay by the employer, employees will receive sick allowance by their health insurance in the amount of 70% of their last salary. The maximum period for this coverage is 78 weeks within a period of 3 years. The employee is entitled to a paid sick leave after four weeks of uninterrupted period of employment.

Are employees who remains continuously or repeatedly incapacitated for longer than six weeks within one year, employer and the worker look for the ways through which

incapacity can be prevented and work can be obtained.

**Source:** §3-5 of the Public Holiday and Sick Pay Act; §84 of the Social Code IX; § 44 of Social Code V

## Medical Care

In Germany, health insurance schemes are administered by a number of sickness funds, all of which are subject to government regulations. These funds provide medical benefits, hospital care and cash benefits. All salaried employees and wage earners including a dependant spouse and children, pensioners including family members, unemployed persons and students are eligible for the scheme.

**Source:** Social Code V

## Job Security

If an employee is incapable of work due to illness, the employer may give notice if: a negative prognosis for the employee's future health can be given; the employer's business is affected seriously by the incapable employee, e.g. is experiencing a financial burden because of paying for sick leave; and the employer's interest to end the employment contract outweighs the employee's interest in keeping his or her job. The entitlement to continued payment of wages is not affected when the employer terminates the employment relationship on the occasion of incapacity. The same applies if the employee terminates the employment relationship for a reason, which entitles the employee to terminate the contract without notice.

**Source:** §8 of the Public Holiday and Sick Pay Act

## Disability / Work Injury Benefit

Work injuries are can lead to the following four situations: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker. Work Injury Benefit is paid if the ability to work as a result of an insured event even after 26 weeks is still reduced by at least 20%.

In the case of full incapacity/disability, the annual benefit/pension is 66.67% of the previous year's earnings. In the event of partial disability, a percentage of the full pension is paid according to the assessed loss of earning capacity. In the case of disability of at least 50%, benefit increase by 10%. There is also a provision for constant attendance allowance.

In the case of fatal injury, dependents (widow/ widower, children) receive survivors' pension from the accident insurance and from the statutory pension insurance. The major spouse's pension amounts to 40%, the minor spouse's pension 30% (if the surviving spouse is under 45 years) of the insured worker's previous year's earnings. Half-orphans receive 20% and 30% full orphan of the worker's previous year's earnings. The total amount of survivors' benefit cannot exceed 80% of the previous year's earnings.

**Source:** Social Code VII

# 09/13 SOCIAL SECURITY

## ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

**Germany has ratified the Convention 102, 121, 128 and 130.**

### *Summary of Provisions under ILO Conventions*

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give “due regard to the working ability of elderly persons” and “demographic, economic and social criteria, which shall be demonstrated statistically”. Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

## Regulations on social security:

### Pension Rights

Normal Retirement age for men and women is 65 years if born before 1947. The retirement age is rising to 67 years during 2012-2029 and the retirement age for those born in and after 1964 is 67 years. The early retirement age is 63 years with at least 35 years of coverage. The pension is based on total individual earnings points multiplied by the pension factor and the pension value. The early pension is a reduced form of full pension by 0.3%. On the other hand, full pension is increased by 0.5% in the case of deferred pension. There are exceptions to the raising of the pension age – the so called old-age pension with 63. From 1 July 2014, long-term insured, which insured at least 45 years in the statutory pension insurance, can go with already 63 years without reductions in pension.

### Dependents' / Survivors' Benefit

The worker who is subject to compulsory pension insurance is also covered by survivors' insurance. The benefit includes widow's and orphan's pension.

Entitlement to a widow's or widower's pension is subject to a qualifying period of five years of contribution. The qualifying period may be deemed fulfilled if the insured person died as a consequence of an employment injury or shortly after completing education/training. Moreover, for a surviving spouse to be entitled to a pension, the marriage must in principle have lasted for at least one year. A minor widow's or widower's pension is 25% of the full invalidity pension (Rente wegen voller Erwerbsminderung) or 25% of old-age-

pension (Altersrente) of the deceased person (referred to as the minor widow's/widower's pension); the major widow's or widower's pension is 55 % of the full invalidity pension or old-age-pension of the deceased person. There is also a provision for large/major widow's or widower's pension which is payable for unlimited duration and ceases only on remarriage. The payment of the minor widow's or widower's pension is limited to two years. The survivor pension depends on age, working ability, dependent children and personal income of the surviving spouse at the time of death of the insured worker. A spouse under the age of 45 years, not disabled or without a dependent child receives a reduced/minor pension for a period of 24 months. A spouse over the age of 45 years, or disabled or with at least one dependent child receives full pension.

The orphan's pension for half-orphans amounts to 10% of the deceased parent's pension plus an orphan's supplement. For full orphans, the pension amounts to 20% of the deceased parents' pensions plus an orphan's supplement.

### Unemployment Benefits

The employee is entitled to draw unemployment benefits if a job was held for at least 12 months during the past 3 years before unemployment began and he/she is available for work, i.e. he/she must be capable of working and willing to accept any suitable employment offered, and he/she is actively seeking employment. The benefit is provided for between 6 and 24 months depending on age and how long the employee has worked before unemployment. The benefit level also depends on previously earned salary, family status and number of dependent

children. There are many special decrees and laws which influence the unemployment benefit level. But as a rule, benefit is 67% of the employee's last net income, if the employee has one or more dependents children and 60 % in all the other cases.

**Source:** §136(ff) of the Social Code III

## Invalidity Benefits

All the workers who are subject to compulsory pension insurance are insured against invalidity (means reduced earning capacity). Invalidity pension is awarded if an insured person, following a reduction in his or her capacity for work for health reasons, is no longer able to perform an activity under normal labour market conditions for at least six hours (pension for partial invalidity) or at least three hours (full invalidity) per day. Full invalidity is paid at the same rate as old-age-pension and in case of partial invalidity half of the pension is due; in younger people need invalidity pension (younger than 62 years), the pension is extrapolated to age of 62 years. In order to qualify for a pension, employee has to provide proof of having paid insurance contributions for at least 60 months (qualifying period). In addition, he/she must provide proof of having been compulsorily insured for three of the last five years before the onset of invalidity.



# 10/13 FAIR TREATMENT

## **ILO Conventions**

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Convention 190 (2019) is about elimination of violence and harassment in the world of work.

**Germany has ratified the Conventions 100 and 111.**

### ***Summary of Provisions under ILO Conventions***

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Convention No. 190 recognizes the right of everyone to a world of work free from violence and harassment. It defines violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”. This definition covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things.

An employer can't discriminate against you in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

## Regulations on fair treatment:

- General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz) of 14 August 2006, as amended up to 5 February 2009
- Basic Law for the Federal Republic of Germany (Grundgesetz), of 23 May 1949, as amended up to 11 July 2012 (BGBl I, p. 1478)

## Equal Pay

The German Constitution of 1949 prohibits any discrimination between persons of a comparable group without objective reasons. The Anti-Discrimination Act also requires that workers get equal treatment in all employment matters including remuneration irrespective of their sex, sexual orientation, religion or belief, race, national or ethnic origin, age, and disability.

The Pay Transparency Act (Entgelttransparenzgesetz) prohibits discrimination in pay on the basis of sex and stipulates equal pay for equal work or work of equal value. Any person who is discriminated against may claim the same salary as a comparable employee of the other gender.

Female and male employees are considered to be engaged in work of "equal value" if they are in a comparable situation regarding their work (type of work, the qualification requirements for the job and working conditions).

**Source:** §3 Basic Law for the Federal Republic of Germany; §1, 2(2) & 8(2) of the General Act on Equal Treatment; Pay Transparency Act of 30 June 2017

## Sexual Harassment

Sexual harassment is considered a form of discrimination, when unwanted conduct of sexual nature (including unwanted sexual acts and requests to carry out sexual acts, physical contact of a sexual nature, comments of a sexual nature as well as the unwanted showing or public exhibition of pornographic images) takes place with the purpose or effect of violating the dignity of the person concerned, in particular where it creates an intimidating, hostile, degrading, humiliating or offensive environment.

The General Act on Equal Treatment provides protection against sexual harassment at the work place. The affected individual can institute legal proceedings against the employer for damages or non-financial losses. Criminal proceedings can be started under section 240 (sexual assault), section 177 (sexual coercion), section 223 (causing bodily harm), section 225 (abuse of position of trust if victim's health is damaged) and section 229 (causing bodily harm by negligence) of the Criminal Code.

**Source:** §1, 3(4), 7 & 15 of the General Act on Equal Treatment

## Non-Discrimination

Under the General Equal Treatment Act, direct or indirect discrimination is prohibited on the grounds of race or ethnic origin, gender, religion or belief, disability, age, or sexual identity. The other prohibited grounds for discrimination covered under the German constitution and other laws are political opinion, membership of a trade union, marital status and pregnancy. Section 75 of the Works Constitution Act

requires that the employers and the works council must ensure that every person employed in the organisation is treated in accordance with the principles of law and proportionality and in particular that there is no discrimination against persons on account of their race, creed, nationality, origin, political or trade union activity or convictions, gender or sexual identity.

Part-Time and Fixed-Term Work Act prohibits discrimination against a part-time worker only on account of hours of work. Such workers are to be treated similarly as full-time workers unless there are factual reasons justifying differential treatment. Similarly, the law prohibits discrimination against fixed term contract workers. These workers must be treated similarly as permanent workers. Law does allow calculation of remuneration and various benefits on pro-rata basis. Employers are prohibited to discriminate against employees exercising their rights under the law. Termination of an employment contract on the ground of worker's refusal to change the employment status from full time to part-time or vice versa is prohibited.

**Source:** §1, 2, 3, 7 & 15 of the General Act on Equal Treatment; §3 of the Basic Law for the Federal Republic of Germany; §4, 5, & 11 of the Part-Time and Fixed-Term Work Act

and their place of training. The practice of an occupation or profession may be regulated by or pursuant to a law.

**Source:** §3(2), 12 of the Basic Law for the Federal Republic of Germany; §1 & 7 of the General Act on Equal Treatment

## Equal Choice of Profession

Women can work in the same industries as men as no restrictive provisions could be located in the laws. Men and women have equal rights. The state promotes the actual implementation of equal rights for women and men and it also takes steps to eliminate disadvantages that now exist. Constitution also grants everyone the right to a free choice of profession, their place of work

# 11/13 MINORS & YOUTH

## **ILO Conventions**

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

**Germany has ratified the Conventions 138 and 182.**

### ***Summary of Provisions under ILO Conventions***

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

## Regulations on minors and youth:

- Young Individuals' Protection in Employment Act (Jugendarbeitsschutzgesetz), of 12 April 1976, as amended up to 20 April 2013 (BGBl I, p. 868)

## Minimum Age for Employment

Under the German Youth Employment Protection Act (Jugendarbeitsschutzgesetz), the minimum age for employment is 15 years, because the employment of children (less than 15 years) is forbidden. The prohibition does not apply to the employment of children over 13 years with the consent of the legal guardian, if the job is light and suitable for children. Suitable job means it does not adversely affect the safety, health and development of children, their attendance at school, their participation in activities to career choice or professional training that is recognized by the competent authority, and their ability to follow benefit from the instruction. Children 13 or 14 years of age may do farm work for up to three hours per day or deliver newspapers for up to two hours per day, and children 3 to 14 years of age may take part in cultural performances under strict limits on the kinds of activity, number of hours, and times of the day.

For Youths (Jugendliche), which underlie full-time compulsory education, find rules for children appropriate application. The Young Individuals' Protection in Employment Act defines a "Youths" as any person who is 15 but not yet 18 years old.

**Source:** §2, & 5(1-3) of the Young Individuals' Protection in Employment Act

## Minimum Age for Hazardous Work

Minimum Age for Hazardous Work is set as 18 years. Workers younger than 18 years are considered minor or juvenile workers. It is prohibited to employ juveniles with work beyond their physical or psychological capacity, with jobs where they are exposed to moral danger; with work that are associated with the risk of accidents to take from those that young people do not recognize or cannot turn away because of lack of safety awareness or lack of experience; with jobs where their health is affected by exceptional heat or cold or severe wetness; with jobs where they are exposed to the harmful effects of noise, vibration or radiation; with jobs where they are exposed to the harmful effects of hazardous substances within the meaning of the Chemicals Act, with jobs where they harmful effects of biological agents within the meaning of Council Directive 90/679/EEG of 26 November 1990 are subject to the protection of workers from exposure to biological agents at work. Juveniles must not be employed with chord work and other work in which, by a heightened pace of work, a higher fee may be achieved. Young people must also not be employed with underground operations.

**Source:** §22, 23, 24 & 25 of the Young Individuals' Protection in Employment Act

# 12/13 FORCED LABOUR

## ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

**Germany has ratified both Conventions 29 & 105.**

### ***Summary of Provisions under ILO Conventions***

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

## Regulations on forced labour:

- Basic Law for the Federal Republic of Germany (Grundgesetz), of 23 May 1949, as amended up to 11 July 2012 (BGBI I, p. 1478)
- Civil Code (Bürgerliches Gesetzbuch), Art. 611-630, 2002 (new version), as amended up to 22 July 2014 (BGBI. I, p. 1218)

## Prohibition on Forced and Compulsory Labor

Under German Constitution no one may be forced to a particular work except as part of a conventional general and public service obligation. Forced labour is only permitted for a court-ordered detention.

**Source:** §12 of the Basic Law for the Federal Republic of Germany

## Freedom to Change Jobs and Right to Quit

There is no provision in German labour legislation which restrict the workers to change or quit job. Constitution grants everyone the right to a free choice of profession, their place of work and their place of training. If a worker decides to terminate the employment, he/she may resign by giving notice to the employer; in the case of ordinary notice of termination under adherence notice period.

**Source:** §622 of German Civil Code; §12(1) of the Basic Law for the Federal Republic of Germany

## Inhumane Working Conditions

The normal full-time-working hours are 8 hours a day. A 10-hour limit (including overtime) is permitted, provided an 8-hour average is maintained over a 6-month or 24-week period (60 hours per week, thus 12 hours of overtime).

For more information, please refer to the section on Compensation.



# 13/13 TRADE UNION

## ILO Conventions

Freedom of association and protection of the right to organize: Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

**Germany has ratified both Conventions 87 & 98.**

### *Summary of Provisions under ILO Conventions*

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

## Regulations on trade unions:

- Basic Law for the Federal Republic of Germany (Grundgesetz), of 23 May 1949, as amended up to 11 July 2012 (BGBl I, p. 1478)
- Works Constitution Act (Betriebsverfassungsgesetz) in the version published on 25 September 2001 (BGBl I, p. 2518), last amended 20 April 2013 (BGBl I, p. 868)
- Federal Personnel Representation Law (Bundespersönalvertretungsgesetz), of 15 March 1974, as amended up to 3 July 2013 (BGBl I, p. 1978)
- Collective Agreement Act (Tarifvertragsgesetz), of 9 April 1949, as amended up to 11 August 2014 (BGBl I, p. 1348)
- Co-determination Act (Mitbestimmungsgesetz), of 4 May 1976, as amended up to 22 December 2011 (BGBl I, p. 3044)

## Freedom to Join and Form a Union

The right to freely associate is guaranteed to everyone by the Constitution. Everyone has the right to freely associate with others in order to protect their economic and social interests. Associations whose aims or activities contravene the criminal laws or which are directed against the constitutional order or the concept of international understanding are prohibited. The employer and the works council work together in accordance with applicable collective bargaining agreements and trust in interaction with the represented in-house unions and employers' associations for the benefit of workers and operation.

The Works Constitution Act

(Betriebsverfassungsgesetz) stipulates that in any works or office with at least five employees over the age of 18, a Works Council can be established. The Works Council represents the employees of its enterprise, and exercises various information, consultation, and codetermination rights against the employer.

**Source:** §9 of the Basic Law for the Federal Republic of Germany; §1, 2, 7, & 80(ff) of the Works Constitution Act

## Freedom of Collective Bargaining

The Works Constitution Act (Betriebsverfassungsgesetz) regulates the right to company bargaining and includes regulations covering the process and the content of company agreements (Betriebsvereinbarungen) in the private sector. The Federal Personnel Representation Law (Bundespersönalvertretungsgesetz) and the corresponding Country Personnel Representation Laws regulate the rights of personnel representations of public sector.

The Codetermination Act (Mitbestimmungsgesetz) as one of various laws regulates the codetermination at the supervisory committee.

Trade union bodies participate in matters of labour relations, including collective bargaining. For rights and possibilities of trade unions to negotiate collective agreements (Tarifverträge) for their members, see the Art. 9 of Basic Law for the Federal Republic of Germany and the sections of Collective Agreement Act (Tarifvertragsgesetz (TVG)). Trade unions conclude collective agreement with an employer, which may regulate working

conditions including wage conditions and conditions of employment, relations between employers and employees, relations between employers or their organizations and one or more employees" organizations on more favourable terms than those stipulated in labour laws.

Employers are obliged to enable trade union bodies, work councils or works trustees to operate at workplaces.

**Source:** §2-3 of the Works Constitution Act; §9 Basic Law for the Federal Republic of Germany

## Right to Strike

Normally the works council and the employer seek to work together in a spirit of mutual trust. Works councils in Germany do not have the right to strike. But trade unions in Germany are principally legally permitted to strike if negotiations collapse. Before a strike is called, a secret ballot (so called Urabstimmung) is only necessary, if the constitution of trade union include this point. Token strikes (for instance brief work stoppages designed to reinforce demands during wage negotiations) are also permitted after an agreed cooling-off period. All employees (with the exception civil servants because of Art. 33 V Basic Law for the Federal Republic of Germany) against whose company the trade union has called a strike are entitled to come out on strike, regardless of whether or not they are union members. A worker cannot be discriminated against for participating in a strike. Employment contracts remain in force during a strike, but no remuneration is payable. A strike fund provides union members with support to compensate for this loss of earnings.

Under a 2017 reform of the Temporary Employment Act, temporary workers cannot be employed in a strike if they are carrying out activities of striking primary workers. In the case of an infringement, the employer is liable to a fine of up to €500,000.

The German Federal Labour Court decided on 14 August 2018 that it is permissible for an employer to promise employees a strikebreaking premium if they refuse to participate in a strike.

**Source:** §9(3) of the Basic Law for the Federal Republic of Germany; §74 Works Constitution Act

# QUESTIONNAIRE

## DECENTWORKCHECK.ORG

## Check

DecentWorkCheck Germany is a product of WageIndicator.org and  
www.lohnspiegel.de/main



National Regulation exists



National Regulation does not exist

## 01/13 Work &amp; Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

## 02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

## 03/13 Annual Leave &amp; Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

## 04/13 Employment Security





10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

## 05/13 Family Responsibilities





15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>

## 06/13 Maternity &amp; Work





18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy<br><i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child   |  | <input type="checkbox"/> | <input type="checkbox"/> |





## 07/13 Health & Safety

- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace  |  | <input type="checkbox"/> | <input type="checkbox"/> |









## 08/13 Sick Leave & Employment Injury Benefits

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |    | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury                                       |   | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease     |  | <input type="checkbox"/> | <input type="checkbox"/> |













## 09/13 Social Security

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |



## 10/13 Fair Treatment

- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination                                     |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Sex/Gender   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Race   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Colour   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Religion   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Political Opinion  |  | <input type="checkbox"/> | <input type="checkbox"/> |




\* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
Age		<input type="checkbox"/>	<input type="checkbox"/>
Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
Language		<input type="checkbox"/>	<input type="checkbox"/>
Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





## 11/13 Minors & Youth

41. In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42. In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

## 12/13 Forced Labour

43. I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44. My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

## 13/13 Trade Union Rights

46. I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47. I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48. My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>



## Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Germany scored 45 times "YES" on 49 questions related to International Labour Standards

### If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

### If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

### If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.