

Labour Rights in Germany

(for English Speakers)



As foreigners, we are especially vulnerable to exploitation because we are unfamiliar with our rights as workers in Germany. Employers often shamelessly exploit this situation. This leaflet is meant to give you a brief overview of your rights. The rights listed here represent only the minimum standards. If you want more, you have to fight. That's what unions are for. FAU stands for Free Workers' Union. Together, we can stand up to the bosses and fight for equality in the workplace.

In the FAU the members decide. There is no leadership body or paid official telling you what to do. Every member can become active and have their say. By sharing knowledge and participating, members can also gain experience that will help them achieve concrete improvements in their workplaces and beyond.

In labour struggles, demands are developed by those whom they affect. Because of our grassroots structure, we can adapt to specific situations. We rely on solidarity and quick mobilization. The support of our members is direct, their actions effective.

We are organised locally, federally and internationally. The FAU is a federation with member groups in many major German cities. We are also part of the international revolutionary syndicalist workers' movement and routinely assist in their struggles, as they do in ours.

If you want to join us, then send an email (faub-aus@fau.org) and we will let you know what your options for meeting us are. For example, the FAU features a number of syndicates that are organised according to industry sector in different cities. German is generally spoken in most syndicates but there is always the option of communicating with us in English and/or Spanish. We will of course try to find comrades who are able to talk to you in other languages.

Please note: This is just a very general list and there are many details and exceptions to take into account. This leaflet is available in several different languages, see: www.fau.org/the-basics

1. Employment contract

You have the right to a written employment contract. Your boss has to give you a signed copy within a month at the latest. The following terms should be stated in your contract:

- Name and address of contracting parties
- Starting date of employment
- For fixed term contracts: length of employment period
- Job location or a note to the effect that the worker may be employed at different locations
- Job description
- Salary, including and detailing overtime pay, allowances, bonuses, extra payments and other components of your salary plus date of payment
- Working hours
- Length of annual leave
- Notice period for terminating employment
- Reference to any collective and internal company agreements that may apply

2. Minimum wage

A minimum wage is the lowest remuneration that an employee is entitled to. Remuneration can be determined as an hourly or monthly wage. As of 2019, the legal, nationwide minimum wage in Germany of 9,19 € per hour (gross) which applies to all employees working in Germany. As a general rule, the national minimum wage applies to everyone! However, for employees who have been unemployed long-term (for a year or more) immediately before taking up employment, the minimum wage does not apply for the first six months of employment.

Prior to the introduction of the national minimum wage in 2015, some industry sectors had already established higher minimum wages, e.g. the building sector (over 10,00 €/h) – these still apply. There are also a number of collective agreements which determine higher wages. If you are entitled to higher wages, these can be claimed in a court of law.

3. Non-payment of wages

If payment is delayed for a prolonged period, an employee is allowed to stop work until payment after giving notice. The employer has to continue paying wages for the time you don't work. Legally, all work must be paid, so beware of unpaid labour! As a general rule, you should write down all the hours you have worked. It is important to make a note of the date, as well as the time you began and the time you stopped work. Also write down the times of

any breaks you may have taken.

4. Overtime and night shifts

You may be asked to work up to 10 hours per day on a temporary basis, but the average workday must not exceed 8 hours. If you work night shifts, you are entitled to additional paid leave or a pay supplement (at least 25 %). According to the Working Time Act, the night shift generally lasts between 23:00 and 6:00.

5. Breaks / rest periods

The Working Time Act also stipulates that you are entitled to a 30 minute break after 6 hours of continuous work. After 9 hours, you are entitled to a 45 minute break. You may also take 2 to 3 separate 15 minute breaks. Breaks are not counted as part of working time and are generally unpaid. If your breaks are shorter than 15 minutes, they do not count as unpaid break-time, but as paid (!) working time.

Between shifts you are entitled to an uninterrupted rest period of 11 hours at least.

Workplaces with more than 10 employees must have a break room. Your breaks may not be interrupted.

6. Leave / rest

You are legally entitled to at least 24 working days of paid annual leave. You must take this leave during the current calendar year. Generally speaking, you cannot have leave transferred to the following year; only in some exceptional cases can leave be transferred to the first three months of the following year. Some collective agreements allow for more days of paid leave and even extra holiday pay. Sundays and holidays are days of rest, but there are a number of sectors excluded from this rule (e.g. hotels and restaurants).

7. Illness

Your employer pays about half of your health insurance costs. If you are sick and can't work, your boss has to pay all your wages for up to 6 weeks. After that, the health insurance company will pay 70% of your net wages for another 78 weeks maximum. But you have to have been employed for at least 4 weeks and you have to inform your boss immediately if you can't work and roughly how long you will be sick. After three days at the latest, you must submit a sick note from your doctor. Please note: this means three calendar days, not three working days! If stipulated by your boss or stated in your contract or in the collective agreement for your industry sector, your boss can also demand a sick note on the very first day of illness.

8. Pregnancy and children

As a general rule, female employees can't be fired from the beginning of pregnancy until 4 months after giving birth. In some cases, however, your boss can apply to the local government

to agree to a dismissal. Your boss must make a rest room available to pregnant employees within the workplace. You can take paid leave for the last 6 weeks before due date and until 8 weeks after giving birth (maternity leave). Theoretically you can work during this time – but only if you want to and at your own responsibility. You should, of course, not do this! There is a categorical ban on working for 8 weeks after giving birth.

Both parents together can take 14 months of parental leave after birth during which time they will receive financial support from the government and are protected from dismissal.

If a child is ill, both parents are entitled to ten days leave per child. If you have several children, the maximum amount of leave is 25 days. Single parents are entitled to twice the amount of leave – 20 days for each sick child and a maximum of 50 days for several children. If an employee has a seriously ill child to care for, these restrictions may be lifted. Generally speaking, your boss has to pay 100% of your wages for these days. However, the payment of wages in case of a sick child may be ruled out by a collective agreement. In this case you may be entitled to child care benefit payments. If the sick child is under twelve years old and there is no other person living in the household who is able to care for the child, these payments will be made by your health insurance company. To apply for child care benefit you will need a certificate from your pediatrician.

9. Dismissal / termination agreement

According to the Dismissal Protection Act, terminations based on misconduct must be preceded by warnings not to repeat said misconduct. Only severe cases of misconduct can lead to being fired without notice. This act provides safeguards against wrongful dismissal, but only applies after 6 months of employment and to workplaces with more than 10 employees working for at least 30 hours per week. Regardless of workplace size, you are entitled to 2 weeks of notice in your first 6 months of employment after which you are entitled to 4 weeks or more, depending on tenure.

Dismissals must be undertaken in writing. Wrongful dismissals have to be contested within 3 weeks. Your boss may demand that you sign your dismissal

notice. Do not do this! In most cases this will be a so-called termination agreement. If you sign this, you may lose all your rights and may also be subjected to a ban on unemployment benefits or "Hartz IV".

10. Unemployment

Hartz IV (aka ALG II) is a barebones unemployment insurance for the long-term unemployed, the short-term employed, low-income earners, etc. It covers your rent (if it is deemed not too high) and health insurance and includes a minimal allowance for food and such. If you work and earn less than the Hartz IV rate, you can become a so-called "Aufstocker", i.e. the unemployment office will pay the difference between your wage and Hartz IV. If you have not worked long enough to qualify for full unemployment insurance, you can usually get Hartz IV. However, the exception proves the rule. For example, EU migrants need a side job where they earn at least ca. 200 €/month or they have to have been residents of Germany for at least 5 years in order to

get Hartz IV. You should seek advice before applying.

If you have been an employee subject to statutory social security payments for at least 12 months over a period of two years in Germany, you are entitled to full unemployment benefits (ALG I). Unemployment benefits are calculated based on your average income over the last twelve months, including Christmas bonuses, holiday pay and any other one-off payments. This sum is used to calculate a daily assessment wage which – after deducting payroll tax, solidarity surcharge and a flat 21% for social security contributions – is your actual daily wage. An unemployed person will receive 60% of this daily wage – 67% if you have children. You are entitled to ALG 1 payments for half of the amount of months that you have made social security payments in the last 24 months. In some cases this period may be extended. After this period ends, jobseekers move to Hartz IV.

11. Internships

In general, an internship is meant to be an opportunity to “try out” a job, not full-scale employment. For this reason, “genuine” internships are as a rule unpaid. Voluntary interns, unlike job trainees and student interns, have the same rights as employees do.

If you are an intern, you are also entitled to the statutory minimum wage if you fall into one of the following groups:

- Interns not working within a vocational training program or course of study who have already completed vocational training or course of study.
- Voluntary internships as a co-op program to a course of study or vocational training lasting over three months.
- Voluntary internships as a co-op program to a course of study or vocational training, if the student or trainee has already completed an internship with the same employer.
- Voluntary internships as a career or study orientation measure lasting over three months.

12. Freelancers / self-employed

Freelancers must be paid within one month after issuing their invoice. Most of the other rights listed here do not apply to them. However, you may be a “fictitious freelancer” and have the same rights as an employee. You would then have the right to a fixed contract. Under certain circumstances, it may be difficult to determine whether you are an employee or a freelancer. Above all, this depends on whether your work takes place as dictated by your boss, whether they tell you when and where to work, whether you are a fixed part of your employer’s organisation, and whether your work is for “third-party use”, i.e. if you work for your boss according to their plans.

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