

Labour Contracts



Labour Contracts

An employment contract is the ground upon which employer and employee build their relationship. It goes without saying that it is of utmost importance. Besides the obvious need to secure the conditions of employment and to protect the employer against complaints and legal actions, it can also be an advantage for the recruitment process and the attraction of top talents.



Of course, every contract has to contain specific data and details of the employment. The mandatory regulations, however, cover only a part of the basic conditions for a mutually satisfactory working relationship. Some points can also be negotiable as long as they comply to or are more favourable for the employee than the mandatory regulations.

In Germany, employments are usually documented in writing. Since the Evidence Act passed parliament, the law requires this form. This act was due to a European legislative initiative. There is, however, no substantial consequence if the employer fails to comply with these obligations – but the evidence burden is passed to him/her.

Obligatory contents

- Name and address of employer and employee
- Commencement date of the employment
- Duration or date of expiry in case of temporary or fixed-term employments
- Place of work
 - ↳ In case of no particular place of work: reference to the fact that the employee can be employed at various places
- Job description and specifications
- Amount of remuneration including due dates
 - ↳ Components of remuneration (e.g. additional payments, bonuses, special payments etc.) must be listed in detail
- Working time and hours agreed on
- Annual holiday entitlement
- Notice periods for terminations of employment
- A general reference to the works agreements and collective agreements which apply to the employment relationship

Please note that in case the employee has to work outside Germany for more than one month, the terms and conditions of this deployment must be added.



Principles

Unwritten Rights

The terms of an employment are not only defined by the conditions explicitly set out in writing but as well by principles like work practice and equal treatment.

A work practice comes into existence when the employer repeats a certain action at least three times voluntarily and without reservation. More precisely, a practice becomes an enforceable right if it is implemented constantly, for a considerable time, generally and uniformly. In practice, on that basis, employees might claim special benefits like Christmas bonuses or gratification.

Equal Treatment

The principal of equal treatment is regarded as one of the most important principles in German labour and employment law. In most cases, employees use this principle to create a claim – usually a remuneration claim – against the employer. Employers are not allowed to treat an employee different than a comparable group of workers unless there is an objective reason for the unequal treatment. An employer still has the right to privilege certain individual employees. However, in practice, it is often very difficult to differentiate between permissible privileging and impermissible disadvantaging.



Rights and obligations

Of course, there are a lot of rights and obligations for employers as well as for employees. It goes without saying that they are mutually dependent. To give you an overview, we have chosen the most important regulations.

Employer

Payment

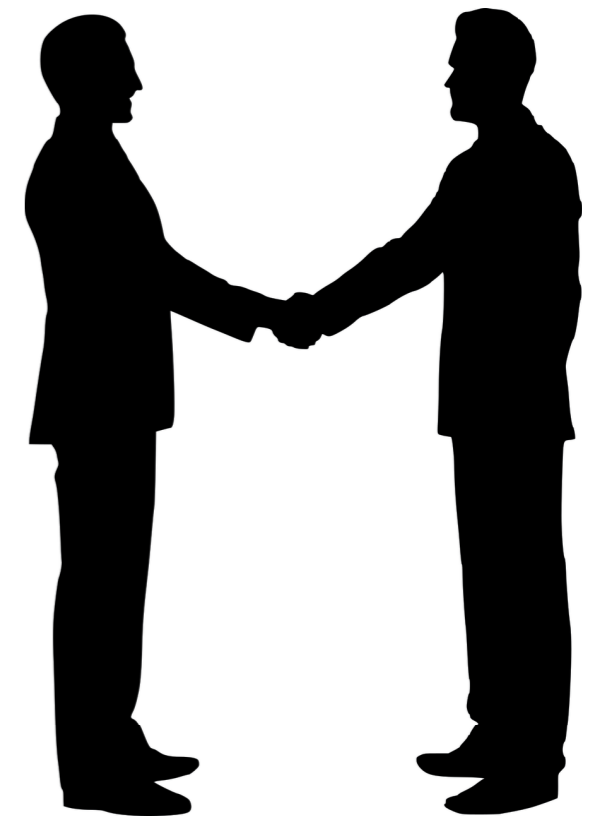
The main obligation of the employer is to pay the employees for their work – even in the event of illness and during holidays – and to do so punctually according to the respective employment contract. Furthermore, it is mandatory to accurately calculate and pay income tax and social security contributions. Heuser Recht und Steuern is a competent partner for these matters.

Duty of Care

In addition, there is a general duty of care, which means to protect the employees from danger to life and limb while working. The duty also includes the protection of dignity and personality – meaning that the employer is obliged to protect employees from bullying and harassments.

Right of Instruction

In return, the employer also has particular rights, of course. First and foremost, the right of instruction. That means the employer decides about content, place and time of work, provided there is no regulation in the contract, the company or the collective agreement or in law.



Employee

Obviously, the employee is, first of all, obliged to do his/her work according to the employment contract. Moreover, there is a duty of loyalty, including for example the duty of confidentiality.

Working hours

Averagely, there are 37.35 working hours per week in West Germany and 39.00 in East Germany. Deviating agreements are possible if they do not contradict the Working Hours Act, which was issued in order to protect the workers and employees. Generally, the legal maximum working hours are 48h/week and 10h/day.

Attention should also be paid to the recent decision of the European Court of Justice. It held that employers must be obliged to record their employees working hours in detail. As the national German law only provides recording of overtime and weekend hours, there will soon be legislative amendments. Consequently, it is recommended to prepare for that.

Breaks

Depending on their daily working time, employees are entitled to breaks.

6–9h working time → 30min break
more than 9h working time → 45min break

This time can be split into sections of 15 minutes. Employees are not allowed to work more than 6 hours without break.

Annual Leave

Employees and workers are legally entitled to paid holidays. The Federal Leave Act (Bundesurlaubsgesetz) grants a minimum of 20 free days per year for employees working 5 days a week. This entitlement increases to 24 days if they are working 6 days per week. Additionally, there are sector-specific collective agreements and individual agreements. Employers usually offer more than the legal minimum and it is recommended to adjust to the average of 28–30 days per year.



Public Holidays

Depending on the federal state, there are 9 to 14 paid public holidays per calendar year. Please find an overview for 2021 here:

Holiday	Date 2021 (2022)	Fixed Date	Federal State
New Years' Day (Neujahr)	January 1	yes	All
Epiphany (Heilige Drei Könige)	January 6	yes	Baden-Württemberg, Bavaria, Saxony-Anhalt
International Women's Day (Internationaler Frauentag)	March 8	yes	Berlin
Good Friday (Karfreitag)	April 02 (April 15)	no	All
Easter Sunday/ Monday (Ostersonntag/-montag)	April 04/05 (April 17/18)	no	All
Labour Day (Tag der Arbeit)	May 1	yes	All
Liberation Day (Tag der Befreiung)	May 8	yes	Berlin
Ascension Day (Christi Himmelfahrt)	May 13 (May 26)	no	All
Whit Sunday/Monday (Pfingstsonntag/-montag)	May 23/24 (June 05/06)	no	All
Corpus Christi (Fronleichnam)	June 03 (June 16)	no	Baden-Württemberg, Bavaria, North-Rhine Westphalia, Rhineland-Palatinate, Saarland
Assumption Day (Mariä Himmelfahrt)	August 15	yes	Bavaria, Saarland
World Children's Day (Weltkindertag)	September 20	yes	Thuringia
German Reunification Day (Tag der deutschen Einheit)	October 3	yes	All
Reformation Day (Reformationstag)	October 31	yes	Brandenburg, Mecklenburg-West Pomerania, Saxony, Saxony-Anhalt, Thuringia, Bremen, Lower Saxony, Schleswig-Holstein, Hamburg
All Saints' Day (Allerheiligen)	November 1	yes	Baden-Württemberg, Bavaria, North-Rhine Westphalia, Rhineland-Palatinate, Saarland
Day of Repentance and Prayer (Buß- und Betttag)	November 17 (November 16)	no	Saxony
Christmas Day (Erster Weihnachtstag)	December 25	yes	All
Boxing Day (Zweiter Weihnachtstag)	December 26	yes	All

CONTACT



Am Kiekenbusch 15
47269 Duisburg

Tel.: +49 203 479992-0

Fax: +49 203 479992-11

Redaktion

Verantwortlicher
Redakteur Heuser-Recht und Steuern
Magazin (v.i.S.d.P.): Achim Heuser

Anzeigenkontakt: kontakt.heuser@heuser-collegen.de

Impressum

Herausgeber:
Achim Heuser,
Am Kiekenbusch 15,
47269 Duisburg, Germany
(Verantwortlicher für den Inhalt
im Sinne des § 6 MDStV)
Ust-ID-Nr: DE161602762

Layout/Gestaltung

GREENS GmbH
Düsseldorfer Str. 15
45481 Mülheim an der Ruhr

www.greens-images.de

Bilder-Quellen: Pixabay.com

Die Inhalte des Magazins wurden mit größter Sorgfalt erstellt. Für die Richtigkeit, Vollständigkeit und Aktualität der Inhalte können wir jedoch keine Gewähr übernehmen. Die erstellten Inhalte und Werke auf diesen Seiten unterliegen dem deutschen Urheberrecht. Beiträge Dritter sind als solche gekennzeichnet. Die Vervielfältigung, Bearbeitung, Verbreitung und jede Art der Verwertung außerhalb der Grenzen des Urheberrechtes bedürfen der schriftlichen Zustimmung des jeweiligen Autors bzw. Erstellers.