

2023

WORKATION IN: GERMANY

Overview of Mandatory Employee Protection Law



Workation in: Germany – Mandatory employee protection law

In a connected world, mobile delivery of work performance is becoming increasingly more common. The most popular phenomenon here is probably the so-called "workation". When employers allow work from abroad, it is not uncommon for mandatory employee regulations to be ignored, regularly unintentionally and out of lack of knowledge.

However, according to Art. 9 (1) Rome I Regulation, these must be taken into account. Usually, this concerns personal occupational health and safety law enacted in the public interest for reasons of public welfare.

When allowing an employee to work temporary **in Germany**, the following German mandatory regulations are to be observed by any employer based in an EU member state regardless of the applicable laws in that state and any contractual choices of law.

The following list is only intended as an overview and cannot replace a specific case assessment.

- 1. Minimum wage** Germany has mandatory minimum wage provisions. Currently, every employee working in Germany must be paid at least 12 € per hour (§ 1 Mi-LoG). The amount can be higher in certain industries, especially those involving manual labour. Overtime hours must also be compensated with at least 12 € per hour, an additional overtime pay is optional.

From 01.01.2024, the minimum wage will be raised to 12.41 €.
- 2. Minimum paid leave** Following § 3 BUrlG, employees working a 6-day-week in Germany are entitled to at least 24 business days of paid leave a year during which the minimum wage requirements must also be observed. If the employee works less than 6 days a week, his or her paid leave is to be reduced accordingly: for each weekly day of work the employee has a right to 4 days of paid leave a year.
- 3. Public holidays** The following public holidays are work-free according to § 9 ArbZG. While some of these holidays apply nationwide, others only exist in certain states or even just certain municipalities. Foreign employers are not obligated to pay their employees for public holidays since § 2 EFZG is not a mandatory regulation.

Name	Date	Scope of application
New Year (Neujahr)	January 1st	nationwide
Epiphany (Heilige Drei Könige)	January 6th	Bavaria, Baden-Wuerttemberg, Saxony-Anhalt
International Women's Day (Internationaler Frauentag)	March 8th	Berlin, Mecklenburg-Western Pomerania
Good Friday (Karfreitag)	Friday before Easter	nationwide
Easter: Easter Sunday (Ostern: Ostersonntag)	Moving date between March 22nd and April 25th	Brandenburg
Easter Monday (Ostermontag)	Monday after Easter	nationwide
May Day/Labor Day (Maifeiertag/Tag der Arbeit)	May 1st	nationwide
Ascension Day (Christi Himmelfahrt)	39 days after Easter	nationwide
Pentecost Sunday (Pfingstsonntag)	49 days after Easter, between May 10th and June 13th	Brandenburg
Pentecost Monday (Pfingstmontag)	50 days after Easter	nationwide
Corpus Christi (Fronleichnam)	60 days after Easter, between May 21st and June 24th	Baden-Wuerttemberg, Bavaria, Hesse, North Rhine-Westphalia, Rhineland-Palatinate, Saarland As well as parts of Saxony and Thuringia
Assumption Day (Mariä Himmelfahrt)	August 15th	Saarland, parts of Bavaria
World Children's Day (Weltkindertag)	September 20th	Thuringia
Anniversary of German Unification (Tag der Deutschen Einheit)	October 3rd	nationwide
Reformation Day (Reformationstag)	October 31st	Brandenburg, Bremen, Hamburg, Mecklenburg-Western Pomerania,

		Lower Saxony, Saxony, Saxony-Anhalt, Schleswig-Holstein, Thuringia
All Saints' Day (Allerheiligen)	November 1st	Baden-Wuerttemberg, Bavaria, North Rhine-Westphalia, Rhineland-Palatinate, Saarland
Day of Prayer and Repentance (Buß- und Bettag)	Last Wednesday before November 23rd	Saxony
Christmas Day (1. Weihnachtstag)	December 25th	nationwide
Boxing Day (2. Weihnachtstag)	December 26th	nationwide

4. Maximum working time

The German legal limit of working time amounts to 8 hours a day for a maximum of 6 days a week (§ 3 I ArbZG). Thus, employees may work a maximum of 48 hours a week. In deviation therefrom, an employee may work 60 hours a week as long as this overtime is sufficiently balanced out with free time within 24 weeks/6 months. Such overtime must be documented (§ 16 II ArbZG). It is crucial that the average daily working time within half a year does not exceed 8 hours.

5. Minimum rest periods

As determined in § 5 I ArbZG, an employee must have 11 hours of continuous resting time between the end of a work day and the beginning of the next.

6. Occupational safety laws

Germany has certain occupational safety laws for the workplace as well as any accommodation directly or indirectly provided by the employer (see f.ex. ArbSchG, ASiG, ChemG, GenTG, MedProdG, BImSchG, ProdSG). Generally speaking, these provisions are adhered to when there are no dangers to life and limb and typical safety hazards are appropriately minimized.

7. Maternity Protection provisions

Employers must also observe the following maternity protection provisions:

Firstly, § 3 I MuSchG prohibits work within the last 6 weeks before childbirth unless the employee expressly agrees to keep working. This right to maternity leave stays in place for at least 8 weeks after childbirth or even 12 weeks in case of multiple birth, premature birth or infant disabilities (§ 3 II MuSchG). The maximum working time for pregnant adult employees is 8.5 hours a day or 90 hours in two weeks and they must not work during the night, on Sundays, or on public

holidays unless expressly agreed on (§§ 4-6 MuSchG). Pregnant or nursing employees are to be released from work for necessary medical appointments regarding the pregnancy and for breastfeeding (§ 7 MuSchG).

Additionally, pregnant employees cannot be terminated at any point during the pregnancy and for four months after childbirth or after a miscarriage after the twelfth week of pregnancy (§ 17 MuSchG). The employer must also ensure work place safety for any pregnant employees and document such measures.

8. Protection of young people at work

Adolescent employees between the ages 15 and 17 are protected by the Jugendarbeitsschutzgesetz which determines a maximum working time of 8 hours a day and 40 hours a week (§ 8 JArbSchG). They are also required to take work breaks of 30 minutes for 4.5 to 6 hours of work and 60 minutes for more than 6 hours. They may not work longer than 4.5 hours without a break of at least 15 minutes (§ 11 JArbSchG). Adolescent employees must be granted a minimum rest period of 12 hours between working days (§ 13 JArbSchG) and two days per week (§ 15). They may not work after 8 p.m. or before 6 a.m. nor on Saturdays, Sundays, and public holidays although §§ 14-18 JArbSchG allow for exceptions in certain industries. Depending on their age, adolescent employees are entitled to 25-30 days of paid leave a year (§ 19 JArbSchG). The employer must also ensure appropriate work safety measures.

9. Anti-discrimination provisions

As in any EU-member state, employees working in Germany are protected by the European anti-discrimination provisions (f.ex. Art. 157 AEUV) as well as the corresponding German provisions (AGG, §§ 164 ff. SGB IX, § 4 TzBfG, Art. 3 GG) which limit contractual freedom. These provisions require the equal treatment of employees of different genders, religions, nationalities, social and cultural backgrounds, ages, and sexual orientations. Different treatment must have an objective and justified reason.

10. Reporting obligations to authorities when taking up work

There are no general reporting obligations for employees from EU member states. However, reporting obligations may exist on the basis of the Posted Workers Act and the Minimum Wage Act, depending on the specific industry.

In particular, employers from the following sectors must observe reporting obligations.

Registration under the Minimum Wage Act:

- Construction and dismantling of trade fairs and exhibitions
- Construction

- Meat industry
- Forestry
- Catering and accommodation industry
- Building cleaning
- Passenger transport
- Showmen's trade
- Freight forwarding, transport and related logistic services
- Prostitution
- Security guards

Registration under the Posted Workers Act:

- Main construction trade
- Roofing trade
- Electrical trades
- Building cleaning services
- Scaffolding trades
- Care services
- Slaughtering and meat processing (meat industry)
- Chimney sweeping trade
- Security services (security guards at commercial airports)
- Stonemasonry and stone sculpture trades
- Training and further education services according to the Second or Third Book of the German Social Code

11. Miscellaneous In addition, an employer might also be required to provide **paid sick leave** according to § 3 EFZG if the employee falls under German social security law. This can be the case if the employee stays in Germany for more than 24 months and/or it is not clear whether and when the employee will return to his or her home state.

Feel free to contact us if you have any questions about German labour law. For contact data, please see below.

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