

Übersetzung durch Ute Reusch

Translation provided by Ute Reusch

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Act Regulating a General Minimum Wage (Minimum Wage Act)

Minimum Wage Act of 11 August 2014 (Federal Law Gazette [BGBl.] Part I p. 1348)

Part 1

Setting of the general minimum wage

Chapter 1

Content of the minimum wage

Section 1

Minimum wage

- (1) Each worker is entitled to payment by their employer of remuneration of no less than the amount of the minimum wage.
- (2) As of 1 January 2015 the amount of the minimum wage shall be 8.50 euros gross per hour. The amount of the minimum wage may be adjusted on the proposal of a standing commission of the parties to collective bargaining (Minimum Wage Commission) by way of a statutory instrument issued by the Federal Government.
- (3) The rules set out in the Posted Workers Act (Arbeitnehmer-Entsendegesetz, AEntG), the Act on Temporary Employment Businesses (Arbeitnehmerüberlassungsgesetz, AÜG) and the statutory instruments issued on their basis shall take precedence over the rules set forth in this Act to the extent that the amount of the industry-specific minimum wages set on their basis is not lower than the amount of the minimum wage. Precedence in accordance with the first sentence shall be given mutatis mutandis to a collective agreement within the meaning of section 4 (1), no. 1, section 5 and section 6 (2) of the Posted Workers Act which has been declared generally applicable on the basis of section 5 of the Collective Agreements Act (Tarifvertragsgesetz, TVG).

Section 2

Due date of payment of the minimum wage

- (1) The employer is obligated to pay the worker the minimum wage
1. on the agreed due date,
 2. at the latest on the last bank working day (Frankfurt am Main) of that month which follows the month in which the work was performed.

Where no agreement has been reached in respect of the due date of payment of the minimum wage, section 614 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) shall remain unaffected.

- (2) In derogation of subsection (1), first sentence, any hours worked over and above the contractually agreed working hours which have been entered in a working time account agreed in writing shall be compensated at the latest within twelve calendar months following their monthly recording by granting paid time off or by payment of the minimum wage, unless the entitlement to the minimum wage in accordance with section 1 (1) for the hours worked has already been satisfied by payment of the set remuneration. In the event of the

employment relationship being terminated, the employer must compensate for uncompensated hours worked at the latest in that calendar month which follows the end of the employment relationship. The hours worked which are entered in the working time account may not exceed 50 per cent of the contractually agreed working hours in each month.

(3) Subsections (1) and (2) shall not apply to agreements on credit systems within the meaning of the Fourth Book of the Social Code (Viertes Buch Sozialgesetzbuch, SGB IV). The first sentence shall apply mutatis mutandis to any foreign rule which is comparable in respect of the protection of workers.

Section 3

Mandatory nature of the minimum wage

Agreements which fall short of the entitlement to payment of a minimum wage or which restrict or rule out its assertion shall be ineffective. A worker may waive the entitlement arising in accordance with section 1 (1) only on the basis of a court settlement; waiver of the entitlement shall otherwise be ruled out. Forfeiture of the entitlement shall be ruled out.

Chapter 2

Minimum Wage Commission

Section 4

Task and composition

(1) The Federal Government shall establish a standing Minimum Wage Commission which passes resolutions in respect of adjusting the amount of the minimum wage.

(2) The Minimum Wage Commission shall be newly appointed every five years. It shall comprise a chairperson plus six permanent members with voting rights and two members chosen from the scientific community without voting rights (advisory members).

Section 5

Members with voting rights

(1) On the proposal of the central employer and employee organisations the Federal Government shall appoint three members with voting rights each from among the associations of employers and trade unions. The central employer and employee organisations shall propose at least one woman and one man each as members with voting rights. If the central employer or employee organisations put forward more than three names, the members will be chosen from among those proposals in relation to the significance of the respective central organisation when it comes to representing employer or worker interests in working life within the federal territory. Where one party does not make use of its right of proposal, the members of that party shall be appointed by the Federal Government from among the associations of employers or trade unions.

(2) If a member leaves the Minimum Wage Commission, a new member shall be appointed in accordance with subsection (1), first and fourth sentences.

Section 6

Chair

(1) The Federal Government shall appoint a chairperson upon the joint proposal of the central employer and employee organisations.

(2) If the central organisations do not make a joint proposal, the Federal Government shall appoint one chairperson each on the proposal of the central employer and employee organisations. The chair will then rotate between the chairpersons following each resolution adopted in accordance with section 9. The first chairperson shall be drawn by lots. Section 5 (1), third and fourth sentences, shall apply mutatis mutandis.

(3) If the chairperson leaves the Minimum Wage Commission, a new chairperson shall be appointed in accordance with subsections (1) and (2).

Section 7

Advisory members

(1) On the proposal of the central employer and employee organisations the Federal Government shall also appoint one advisory member each from the scientific community. The Federal Government shall work towards ensuring that the central employer and employee organisations propose one woman and one man as advisory member. The advisory member should not be employed by

1. a central employer or employee organisation,
2. an association of employers or a trade union, or
3. a facility which is funded by one of the associations referred to in no. 1 or 2.

Section 5 (1), third and fourth sentences, and subsection (2) shall apply mutatis mutandis. (2) The advisory members shall in particular support the Minimum Wage Commission when it comes to conducting the examination in accordance with section 9 (2) by bringing their scientific expertise to bear. They are entitled to participate in the deliberations of the Minimum Wage Commission.

Section 8

Legal status of the members

(1) The members of the Minimum Wage Commission are not bound by any instructions in regard to their activity.
(2) The members of the Minimum Wage Commission shall perform their activities on an honorary basis.
(3) The members of the Minimum Wage Commission shall receive appropriate compensation for the loss of earnings and expenditure arising in the performance of their activities plus reimbursement of their travel expenses in accordance with the provisions applicable to honorary judges at the labour courts. The compensation and the reimbursable travel expenses shall be determined on a case-by-case basis by the chair of the Minimum Wage Commission.

Section 9

Resolution of the Minimum Wage Commission

(1) The Minimum Wage Commission shall pass its first resolution, which will be effective from 1 January 2017, regarding the adjustment of the amount of the minimum wage by 30 June 2016. Thereafter, the Minimum Wage Commission shall pass a resolution in respect of the adjustment of the amount of the minimum wage every two years.
(2) The Minimum Wage Commission shall, in the context of an overall assessment, examine which amount of the minimum wage can suitably contribute to providing workers with an appropriate minimum level of protection, to enabling fair and functioning conditions of competition, and to not jeopardising employment. When setting the minimum wage the Minimum Wage Commission shall subsequently be guided by collective wage developments.
(3) The Minimum Wage Commission must provide written grounds for its decision.
(4) The Minimum Wage Commission shall continuously evaluate the impact of the minimum wage in respect of the protection of workers, conditions of competition, employment in regard to certain branches of industry and regions, as well as productivity and shall present its findings to the Federal Government every two years in a report together with its resolution.

Section 10

Procedure of the Minimum Wage Commission

(1) The Minimum Wage Commission has a quorum when at least half of the members with voting rights are present.
(2) The Minimum Wage Commission shall pass its resolutions by a simple majority of the votes of the members who are present. When a vote is taken on a resolution the chairperson

shall first abstain from voting. If the resolution does not have the majority of votes cast, the chairperson shall make a compromise proposal. If following the deliberations on the compromise proposal it does not have the majority of votes cast, the chairperson shall cast his or her vote.

(3) The Minimum Wage Commission may hear the central employer and employee organisations, associations of employers and trade unions, religious communities under public law, charitable associations, associations representing economic and social interests and others affected by the adjustment of the minimum wage before passing a resolution. It may obtain information and expert assessments from external bodies.

(4) The meetings of the Minimum Wage Commission are not public; the content of its deliberations is confidential. The Minimum Wage Commission shall set down other procedural rules in its Rules of Procedure.

Section 11

Statutory instrument

(1) The Federal Government may make the adjustment to the minimum wage proposed by the Minimum Wage Commission legally binding on all employers and workers by way of a statutory instrument not requiring the consent of the Bundesrat. The statutory instrument enters into force on the day specified by the Minimum Wage Commission in its resolution, at the earliest, however, on the day following its promulgation. The statutory instrument shall have legal force until such time as it is replaced by a new statutory instrument.

(2) Before issuing the statutory instrument, the central employer and employee organisations, the associations of employers and trade unions, religious communities under public law, charitable associations and associations representing economic and social interests shall be given the opportunity to comment in writing. The time limit for submission of comments shall be three weeks; this period begins to run on the day of the publication of the draft statutory instrument.

Section 12

Coordination and Information Office for the Minimum Wage; funding agency

(1) The Minimum Wage Commission shall be supported in the carrying out of its tasks by a Coordination Office. The Coordination Office shall be under the supervisory control of the chair of the Minimum Wage Commission.

(2) The Coordination Office shall be established as an independent organisational unit of the Federal Institute for Occupational Safety and Health.

(3) In its capacity as an information office, the Coordination Office shall inform and advise workers and businesses in regard to the minimum wage.

(4) The Federal Government shall carry the costs arising from the activities of the Minimum Wage Commission and of the Coordination Office.

Part 2

Enforcement of civil claims

Section 13

Contracting entity's liability

Section 14 of the Posted Workers Act shall apply mutatis mutandis.

Part 3

Control and enforcement by public authorities

Section 14

Competence

The customs administration authorities are responsible for examining whether an employer is complying with the obligations under section 20.

Section 15

Powers of the customs administration authorities and other public authorities; employer's duty to cooperate

Sections 2 to 6, 14, 15, 20, 22 and 23 of the Act to Combat Clandestine Employment (Schwarzarbeitsbekämpfungsgesetz, SchwarzArbG) shall apply mutatis mutandis, with the proviso that

1. the authorities referred to therein may also inspect employment contracts, copies in accordance with section 2 of the Act on Proof of the Existence of an Employment Relationship (Nachweisgesetz, NachwG) and other business documents which directly or indirectly provide information about compliance with the minimum wage in accordance with section 20, and
2. those obligated to cooperate in accordance with section 5 (1) of the Act to Combat Clandestine Employment must submit these documents.

Section 6 (3) and sections 16 to 19 of the Act to Combat Clandestine Employment shall apply mutatis mutandis.

Section 16

Notification obligation

(1) An employer with its registered office abroad which employs one or more workers in one of the economic sectors or branches of industry referred to in section 2a of the Act to Combat Clandestine Employment within the scope of application of this Act shall be obligated, before the commencement of each work or service, to notify the customs administration authority which is competent in accordance with subsection 6 that information in writing in German which is required for the audit. The following shall be deemed to be required information:

1. The family name, the given name and the date of birth of those workers employed in the scope of application of this Act,
2. The beginning and anticipated duration of the employment,
3. The place of employment,
4. The place in Germany where the documents required in accordance with section 17 are kept available,
5. The family name, the given name, the date of birth and the address in Germany of the person responsible, and
6. The family name, the given name and the address in Germany of an authorised recipient unless he or she is identical to the person responsible referred to in no. 5.

The employer within the meaning of the first sentence must notify any changes to these particulars without delay.

(2) When notifying this information the employer shall include an assurance that he or she complies with the obligations under section 20.

(3) Where a temporary work agency with its registered office abroad assigns one or more workers to a user enterprise to perform work, before the commencement of each work or service in one of the economic sectors or branches of industry referred to in section 2a of the Act to Combat Clandestine Employment under the conditions set out in subsection (1), first sentence, the user enterprise must notify the following information to the competent customs administration authority in writing in German:

1. The family name, given name and the date of birth of the workers who are being temporarily supplied,
2. The beginning and duration of the assignment,

3. The place of employment,
4. The place in Germany where the documents required in accordance with section 17 are kept available,
5. The family name, the given name and the address in Germany of an authorised recipient for the temporary work agency,
6. The family name, the given name or the name of the company, as well as the address of the temporary work agency.

Subsection (1), third sentence, shall apply mutatis mutandis.

(4) When notifying this information the user enterprise shall include an assurance given by the temporary work agency that it complies with the obligations under section 20.

(5) The Federal Ministry of Finance may determine by way of a statutory instrument not requiring the consent of the Bundesrat, after consulting the Federal Ministry of Labour and Social Affairs,

1. that, in which manner and under which technical and organisational conditions a notification, a notification of changes and the assurance may be submitted by electronic means in derogation of subsection (1), first and third sentences, subsection (2), subsection (3), first and second sentences, and subsection (4),
2. under which conditions no notification of changes need be made by way of exception, and
3. how the notification procedure can be simplified or modified in so far as the posted workers are employed in the context of regularly recurring work or services or other specific features of the work to be performed or the services to be provided require this.

(6) The Federal Ministry of Finance may determine the competent authority in accordance with subsection (1), first sentence, and subsection (3), first sentence, by way of a statutory instrument not requiring the consent of the Bundesrat.

Section 17

Preparation and keeping available of documents

(1) An employer who employs workers in accordance with section 8 (1) of the Fourth Book of the Social Code or in one of the economic sectors or branches of industry referred to in section 2a of the Act to Combat Clandestine Employment shall be obligated to record the commencement, end and duration of the daily working time of these workers at the latest by the end of the seventh calendar day following the day on which the work was performed and to retain these records for at least two years from the effective date applicable to the record. The first sentence applies mutatis mutandis to a user enterprise to whom a temporary work agency assigns one or more temporary workers for the performance of work in one of the branches of industry referred to in section 2a of the Act on Combating Clandestine Employment. The first sentence does not apply to employment relationships in accordance with section 8a of the Fourth Book of the Social Code.

(2) Employers within the meaning of subsection (1) shall keep available the documents required for the monitoring of compliance with the obligations under section 20 in conjunction with section 2 in Germany in German for the entire duration of the workers' actual employment in the scope of application of this Act, at least for the duration of the entire work or service, but no longer than two years overall. Upon the request of the audit authority, the documents must also be kept available at the place of employment.

(3) The Federal Ministry of Labour and Social Affairs may restrict or extend the employer's or a user enterprise's obligations under section 16 and subsections (1) and (2) in respect of certain groups of workers or economic sectors or branches of industry by way of a statutory instrument not requiring the consent of the Bundesrat.

(4) The Federal Ministry of Finance may determine by way of a statutory instrument not requiring the consent of the Bundesrat, after consulting the Federal Ministry of Labour and Social Affairs, how the employer's obligation to record and retain the daily working time of workers in his or her employ may be simplified or modified in so far as this is necessary on account of the specific features of the work or services to be provided or performed or the specific features of the respective economic sector or branch of industry.

Section 18

Cooperation between domestic and foreign authorities

- (1) The customs administration authorities must notify the competent local Land financial authorities of information registered in accordance with section 16 (1) and (3).
- (2) The customs administration authorities and the other authorities referred to in section 2 of the Act to Combat Clandestine Employment may, in accordance with data protection regulations, also cooperate with authorities in other Contracting States to the Agreement on the European Economic Area who are responsible for carrying out tasks corresponding to this Act or for combating illegal employment or who can supply information in regard to whether an employer is fulfilling the obligations under section 20. The rules on international mutual assistance in criminal matters shall remain unaffected thereby.
- (3) The customs administration authorities must notify the Central Trade and Industry Register of any decisions on administrative fines in accordance with section 21 (1) to (3) once they have become final if the fine amounts to more than two hundred euros.

Section 19

Exclusion from public procurement procedures

- (1) Applicants on whom a fine of at least two thousand five hundred euros has been imposed on account of an offence referred to in section 21 shall be excluded from participating in a tender for a delivery, construction or service contract of one of the contracting entities referred to in section 98 of the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen, GWB) for an appropriate period until their reliability has been proven to have been re-established.
- (2) The authorities responsible for prosecuting or punishing the regulatory offences referred to in section 21 may, upon request, supply the information required to the contracting public authorities referred to in section 98, nos 1 to 3 and 5 of the Act against Restraints of Competition and such agencies as keep prequalification directories or directories of entrepreneurs and suppliers authorised by contracting public authorities.
- (3) The contracting public authorities referred to in subsection (2) shall, in the context of their activities, request information from the Central Trade and Industry Register regarding final decisions on administrative fines imposed on account of one of the regulatory offences referred to in section 21 (1) or (2) or shall request applicants to make a declaration that the conditions for exclusion in accordance with subsection (1) are not met. Where an applicant makes a declaration, contracting public authorities in accordance with subsection (2) may at any time request additional information from the Central Trade and Industry Register in accordance with section 150a of the Trade Regulation Code (Gewerbeordnung, GewO).
- (4) Before awarding a contract worth more than thirty thousand euros, the contracting public authority in accordance with subsection (2) shall request information from the Central Trade and Industry Register in accordance with section 150a of the Trade Regulation Act concerning the applicant who is to be awarded the contract.
- (5) The applicant shall be heard before a decision is taken on his or her exclusion.

Section 20

Employer's duties to pay the minimum wage

Employers with their registered office in Germany or abroad are obligated to pay workers employed by them in Germany remuneration of no less than the amount of the minimum wage in accordance with section 1 (2) at the point in time referred to in section 2 (1), first sentence, no. 2 at the latest.

Section 21

Administrative fines provisions

(1) Whoever intentionally or negligently

1. contrary to section 15, first sentence, in conjunction with section 5 (1), first sentence, of the Act to Combat Clandestine Employment does not acquiesce to or does not cooperate with an audit,
2. contrary to section 15, first sentence, in conjunction with section 5 (1), second sentence, of the Act to Combat Clandestine Employment does not acquiesce to property or business premises being entered,
3. contrary to section 15, first sentence, in conjunction with section 5 (3), first sentence, of the Act to Combat Clandestine Employment does not, does not correctly, does not fully, in the prescribed manner or in due time transfer data,
4. contrary to section 16 (1), first sentence, or subsection (3), first sentence, does not, does not correctly, does not fully, in the prescribed manner or in due time present or does not, does not correctly, does not fully, in the prescribed manner or in due time notify the required information,
5. contrary to section 16 (1), third sentence, also in conjunction with subsection (3), second sentence, does not, does not correctly, does not fully, in the prescribed manner or in due time give notification of any changes,
6. contrary to section 16 (2) or (4), does not, does not correctly or in due time enclose an assurance,
7. contrary to section 17 (1), first sentence, also in conjunction with the second sentence, does not, does not correctly, does not fully or in due time make a record or does not retain it or does not retain it for at least two years,
8. contrary to section 17 (2) does not, does not correctly, does not fully or in the prescribed manner keep documents available, or
9. contrary to section 20 does not or does not in due time pay the remuneration referred to therein,

shall be deemed to have committed a regulatory offence.

(2) Whoever has work or services of a significant extent performed or provided by, in his or her capacity as entrepreneur, commissioning another entrepreneur of whom he or she knows or negligently does not know that that entrepreneur in the performance of the contract,

1. contrary to section 20 does not pay the remuneration referred to therein or does not do so in due time, or
2. employs a subcontractor or permits a subcontractor to perform work who, contrary to section 20, does not pay the remuneration referred to therein or does not do so in due time,

shall be deemed to have committed a regulatory offence.

(3) In the cases referred to in subsection (1), no. 9 and subsection (2), a fine of no more than five hundred thousand euros may be imposed on the regulatory offence, in the remaining cases a fine of no more than thirty thousand euros.

(4) Administrative authorities within the meaning of section 36 (1), no. 1 of the Act on Regulatory Offences (Gesetz über Ordnungswidrigkeiten, OWiG) shall be the authorities referred to in section 14 for their respective area of responsibility.

(5) The Federal Administrative Enforcement Act (Verwaltungs-Vollstreckungsgesetz des Bundes, VwVG) shall apply in regard to enforcement in favour of the federal authorities or

legal persons under public law and directly under federal government control and in regard to the enforcement of attachment in rem in accordance with section 111d of the Code of Criminal Procedure (Strafprozessordnung, StPO) in conjunction with section 46 of the Act on Regulatory Offences by the authorities referred to in section 14.

Part 4

Concluding provisions

Section 22

Personal scope

(1) This Act applies to workers. Interns within the meaning of section 26 of the Vocational Training Act (Berufsbildungsgesetz, BBiG) shall be regarded as workers within the meaning of this Act, unless they are doing

1. an internship which is mandatory pursuant to a provision under education law in respect of schools, vocational training regulations, a provision under education law in respect of tertiary education or as part of vocational training at a vocational academy regulated by law,
2. an internship of no more than three months as a period of vocational orientation or prior to commencing a higher education course,
3. an internship of no more than three months which accompanies vocational training or tertiary education, unless such an internship relationship existed with the same trainee prior thereto, or
4. introductory training in accordance with section 54a of the Third Book of the Social Code (Drittes Buch Sozialgesetzbuch, SGB III) or preparation for vocational training in accordance with sections 68 to 70 of the Vocational Training Act.

Without regard to the designation of the legal relationship, an intern shall be deemed to be anyone who, in accordance with the actual arrangement and implementation of the contractual relationship, is undergoing a specific activity in a business enterprise for a fixed period of time in order to acquire practical knowledge and experience in preparation for an occupational activity, although this does not constitute vocational training within the meaning of the Vocational Training Act or practical training of a comparable nature.

(2) Those persons referred to in section 2 (1) and (2) of the Youth Employment Protection Act (Jugendarbeitsschutzgesetz, JArbSchG) who have not completed any vocational training shall not be regarded as workers within the meaning of this Act.

(3) Remuneration paid to those employed for the purposes of their vocational training and to voluntary workers shall not be regulated by this Act.

(4) In the first six months of their employment the minimum wage shall not apply to the employment relationships of workers who were classed as long-term unemployed within the meaning of section 18 (1) of the Third Book of the Social Code immediately prior to beginning their employment. On 1 June 2016 the Federal Government shall report to the legislative bodies as regards the extent to which the rule set out in the first sentence has promoted the reintegration of the long-term unemployed into the labour market and shall give an assessment regarding whether the rule should continue to apply.

Section 23

Evaluation

An evaluation of this Act shall be conducted in 2020.

Section 24

Transitional provision

(1) Until 31 December 2017 deviating regulations of a collective wage agreement of representative parties to collective bargaining shall take precedence over the minimum wage if they have been made binding on all employers with registered offices in Germany and

abroad who fall within the territorial scope of the collective agreement and on their workers; as from 1 January 2017 deviating regulations within this meaning must provide for pay of no less than 8.50 euros gross per hour. The first sentence shall apply mutatis mutandis to statutory instruments issued on the basis of section 11 of the Posted Workers Act and section 3a of the Act on Temporary Employment Businesses.

(2) From 1 January 2015 newspaper delivery staff shall be entitled to 75 per cent and from 1 January 2016 to 85 per cent of the minimum wage in accordance with section 1 (2), first sentence. In the period between 1 January 2017 and 31 December 2017 the minimum wage for newspaper delivery staff shall be 8.50 euros gross per hour. Newspaper delivery staff within the meaning of the first and second sentences shall be those persons who exclusively deliver periodical newspapers or magazines to end customers within the context of an employment relationship; this also includes staff delivering advertising papers with editorial content.