

1. Introduction of a statutory minimum wage in Germany

With the new Minimum Wage Act (Mindestlohngesetz, MiLoG) a statutory national minimum wage will be introduced in Germany for the first time. The Minimum Wage Act obliges every employer to pay at least the minimum statutory wage from **1 January 2015**. Compliance with this obligation will be monitored by the Customs authorities in Germany.

2. Entitled individuals

All employees in Germany will be entitled to the statutory minimum wage. This particularly applies for employees during any probationary period as well as part-timers or marginal employment (i.e. employees with a monthly salary of up to € 450). Interns are also entitled to the minimum wage. The minimum wage does not have to be paid in a few exceptional cases, for example, in the case of internships required by training or university courses. Apprentices, volunteers and employees under the age of 18 without a vocational degree are not covered. Long-term unemployed individuals are excluded from the minimum wage for a period of six months so as to help them get back into employment.

3. Amount and payment of the minimum wage

The minimum wage will initially be € 8.50 gross per hour. As of 1 January 2017, increases will be possible for the first time upon the recommendation of a Minimum Wage Commission which will be established for this purpose. The minimum wage is to be paid to the employee on the agreed date of payment, but on the last working day of the following month at the latest.

4. Mandatory provision

Contracts for payments below the minimum wage or restricting or excluding the entitlement to the minimum wage are illegal. Moreover, it is only possible to waive the right to arrears of the minimum wage on the basis of a court settlement; out-of-court waiver declarations are legally invalid.

5. Transitional regulations

Wages below €8.50 gross per hour will essentially only be possible after 1 January 2015 on the basis of generally binding collective bargaining agreements, statutory ordinances as well as for the newspaper distribution industry until the end of December 2016. However, as of 1 January 2017, the statutory minimum wage will apply uniformly here as well.

6. Which remuneration components go to fulfil the minimum wage requirement?

The minimum wage requirement can be fulfilled by paying a corresponding hourly wage. Alternatively, it is possible to agree a monthly base salary if an average of at least € 8.50 gross per hour will be paid. It has not yet been clarified whether other remuneration components, such as commission, bonuses, allowances or other special payments (e.g. vacation or Christmas bonus) can help fulfil the entitlement to the minimum wage. In the opinion of the legislator, allowances and supplements cannot be taken into consideration. Christmas and vacation bonuses should only then be able to be considered if these are paid proportionately each month and without reserving the right to revoke their payment. It remains to be seen what position the cases will take in this regard.

7. Overtime accounts

Overtime work in excess of agreed working hours must be compensated by payment of remuneration in at least the amount of the minimum wage. Alternatively, overtime hours up to 50% of the agreed working hours can be credited on a monthly basis to a working time account, which has been agreed in writing. Time off from that account is to be granted within 12 months as compensation for any credited overtime hours.

8. Liability for breaches on the part of other companies

The Minimum Wage Act provides for the liability without fault of any end-user company engaging another company as a contractor for the performance of work or services. If the contractor does not pay the minimum wage to the employees who perform the work or services, the contracting company is liable as a guarantor for the net wages resulting from the minimum wage. In such cases, the employees of the contractor can file a lawsuit for payment of the net minimum wages directly against the contracting company. Contracting companies will want to procure that contractors commit to paying at least the legal minimum so they have a right of recourse if this indemnity is called upon.

9. New notification and documentation duties

Employers based abroad, which want their employees in Germany to perform work or services in certain economic sectors in the future, must complete a written registration procedure with the German Customs authorities in advance of 1 January 2015. The same applies for any companies in Germany which employ "leased" employees in Germany through companies based abroad. Furthermore, all companies must document the beginning, end and length of the daily working hours of employees in marginal employment one week after the respective work assignment at the latest and retain such documents for inspection by the authorities for at least two years. For certain industry sectors in Germany, this documentation obligation applies for all groups of employees.

10. Sanctions against employers

Violations of the Minimum Wage Act, i.e. not paying the minimum wage or not paying it in time, can be subject to draconian penalties of up to € 500,000. Administrative fines of more than € 2,500 can additionally result in exclusion from the awarding of public sector contracts in Germany in the future.

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