

Übersetzung durch Ute Reusch in Zusammenarbeit mit dem Bundesministerium für Arbeit und Soziales

Translation provided by Ute Reusch in cooperation with the Federal Ministry of Labour and Social Affairs

Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 2 Absatz 1 des Gesetzes vom 10. Juli 2020 (BGBl. I S. 1657)

Version information: The translation includes the amendment(s) to the Act by Article 2 (1) of the Act of 10 July 2020 (Federal Law Gazette I, p. 1657)

Zur Nutzung dieser Übersetzung lesen Sie bitte den Hinweis auf www.gesetze-im-internet.de unter "[Translations](#)".

For conditions governing use of this translation, please see the information provided at www.gesetze-im-internet.de under "[Translations](#)".

Act Regulating a General Minimum Wage (Mindestlohngesetz – MiLoG)

Minimum Wage Act of 11 August 2014 (Federal Law Gazette I, p. 1348), as last amended by Article 2 (1) of the Act of 10 July 2020 (Federal Law Gazette I, p. 1657)

Division 1

Setting of general minimum wage

Subdivision 1

Content of 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 is 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*), the Act on Temporary Employment Businesses (*Arbeitnehmerüberlassungsgesetz*) and the statutory instruments issued on their basis take precedence over the rules set forth in this Act to the extent that the amount of the sector-specific minimum wages set on their basis is not lower than the amount of the minimum wage.

Section 2

Due date of payment of minimum wage

- (1) Employers are obligated to pay workers 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 Civil Code (*Bürgerliches Gesetzbuch*) remains unaffected.

(2) In derogation from subsection (1) sentence 1, any hours worked over and above the contractually agreed working hours which have been entered in a working time account agreed in writing are compensated at the latest within 12 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 for the hours worked in accordance with section 1 (1) 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) do not apply to agreements on credit systems within the meaning of Book Four of the Social Code (*Sozialgesetzbuch IV*). Sentence 1 applies accordingly to any foreign rule which is comparable in respect of the protection of workers.

Section 3

Mandatory nature of minimum wage

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

Subdivision 2

Minimum Wage Commission

Section 4

Task and composition

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

(2) The Minimum Wage Commission is newly appointed every five years. It comprises 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 appoints three members with voting rights each from among the associations of employers and trade unions. The central employer and employee organisations are generally to 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 are chosen from among those proposals in relation to the significance of the respective central organisations 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 are appointed by the Federal Government from among the associations of employers or trade unions.

(2) If a member retires from the Minimum Wage Commission, a new member is appointed in accordance with subsection (1) sentence 1 and sentence 4.

Section 6

Chair

(1) The Federal Government appoints a chairperson on the joint proposal of the central employer and employee organisations.

(2) If the central organisations do not make a joint proposal, the Federal Government appoints one chairperson each on the proposal of the central employer and employee organisations. The chair rotates between the chairpersons following each resolution which is adopted in accordance with section 9. The first chairperson is to be drawn by lots. Section 5 (1) sentence 3 and sentence 4 apply accordingly.

(3) If the chairperson retires from the Minimum Wage Commission, a new chairperson is 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 also appoints one advisory member each from the scientific community. The Federal Government is generally to work towards ensuring that the central employer and employee organisations propose one woman and one man as advisory member. The advisory member is generally not to 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 no. 2.

Section 5 (1) sentence 3 and sentence 4 and subsection (2) applies accordingly.

(2) The advisory members 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 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 perform their activities on an honorary basis.

(3) The members of the Minimum Wage Commission 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 are determined on a case-by-case basis by the chair of the Minimum Wage Commission.

Section 9 Resolution of Minimum Wage Commission

(1) The Minimum Wage Commission is to 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 is to pass a resolution in respect of the adjustment of the amount of the minimum wage every two years.

(2) The Minimum Wage Commission examines, in the context of an overall assessment, which amount of the minimum wage can suitably contribute to providing workers with an appropriate minimum level of protection, to enabling fair and effective conditions of competition, and to not jeopardising employment. When setting the minimum wage the Minimum Wage Commission is subsequently guided by collective wage developments.

(3) The Minimum Wage Commission is to provide written grounds for its decision.

(4) The Minimum Wage Commission continuously evaluates the impact of the minimum wage on the protection of workers, conditions of competition, employment in regard to certain branches of industry and regions, as well as productivity, and it presents its findings to the Federal Government every two years in a report together with its resolution.

Section 10 Procedure of 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 passes 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 first abstains from voting. If the resolution does not have the majority of votes cast, the chairperson makes a compromise proposal. If, following the deliberations on the compromise proposal, it does not have the majority of votes cast, the chairperson casts 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 substance of its deliberations is confidential. On the proposal of the chairperson, meetings of the Minimum Wage Commission may be attended and decisions may be taken by means of a video conference in exceptional and justifiable cases if

1. none of the members immediately objects to this procedure, and
2. it is ensured that third parties cannot gain access to information about the substance of the meeting.

The Minimum Wage Commission sets 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 approval 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 has legal force until such time as it is replaced by a new statutory instrument.

(2) Before issuing a 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 are given the opportunity to submit a written statement. The time limit for submission of written statements is three weeks; this period begins to run on the day of publication of the draft of the statutory instrument.

Section 12

Coordination and Information Office for Minimum Wage; funding agency

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

(2) The Coordination Office is to 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 informs and advises workers and businesses in regard to the minimum wage.

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

Division 2

Enforcement under civil law

Section 13

Contracting entity's liability

Section 14 of the Posted Workers Act applies accordingly.

Division 3
Control and enforcement by governmental agencies

Section 14
Competence

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

Section 15

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

Sections 2 to 6, 14, 15, 20, 22 and 23 of the Act to Combat Undeclared Work and Unlawful Employment (*Schwarzarbeitsbekämpfungsgesetz*) apply accordingly, with the proviso that

1. the authorities referred to therein are also permitted to inspect employment contracts, records made in accordance with section 2 of the Act on Proof of the Existence of an Employment Relationship (*Nachweisgesetz*) and other business documents which indirectly or directly provide information about compliance with the minimum wage in accordance with section 20, and
2. those required to cooperate in accordance with section 5 (1) of the Act to Combat Undeclared Work and Unlawful Employment are required to submit these documents.

Section 6 (3) and sections 16 to 19 of the Act to Combat Undeclared Work and Unlawful Employment apply accordingly.

Section 16
Notification requirement

(1) An employer established abroad which employs a worker or several workers in one of the economic sectors or branches of industry referred to in section 2a of the Act to Combat Undeclared Work and Unlawful Employment within the area of application of this Act is required, before the start of each work or service, to submit written notification in German to the customs authority which is competent in accordance with subsection 6 which contains all the particulars which are essential for the audit. The following particulars are 'essential':

1. the family name, given name and date of birth of those workers employed within the area of application of this Act,
2. the start and anticipated duration of the employment,
3. the place of employment,
4. the place in Germany where the documents as required under section 17 are kept available,
5. the family name, given name, date of birth and address in Germany of the person responsible, and
6. the family name, given name and address in Germany of an authorised recipient, unless such person is identical to the person responsible referred to in no. 5.

The employer referred to in sentence 1 is required immediately to notify any changes to these particulars.

(2) When notifying this information employers are required to include an assurance that they are complying with the obligations under section 20.

(3) Where a temporary work agency established abroad temporarily supplies a worker or several workers to perform work for a user enterprise, that user enterprise is required, under the conditions of subsection (1) sentence 1, to pass on written notification in German to the competent customs authority before the start 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 Undeclared Work and Unlawful Employment which contains the following particulars:

1. the family name, given name and date of birth of those workers who are being temporarily supplied,
2. the start and duration of the posting,
3. the place of employment,
4. the place in Germany where the documents as required under section 17 are kept available,
5. the family name, given name and address in Germany of an authorised recipient for the temporary work agency,
6. the family name, given name or company name, as well as the address of the temporary work agency.

Subsection (1) sentence 1 applies accordingly.

(4) When notifying this information user enterprises are required to include an assurance given by the temporary work agency that they are complying with the obligations under section 20.

(5) The Federal Ministry of Finance may, in consultation with the Federal Ministry of Labour and Social Affairs, determine, by way of a statutory instrument not requiring the approval of the Bundesrat,

1. that, in which manner and under which technical and organisational conditions a notification, a notification of changes and an assurance may, in derogation from subsection (1) sentence 1 and sentence 3, subsection (2), subsection (3) sentence 1 and sentence 2, and subsection (4), be submitted in electronic form,
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 insofar 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 so require.

(6) The Federal Ministry of Finance may determine the competent authority as referred to in subsection (1) sentence 1 and subsection (3) sentence 1 by way of a statutory instrument not requiring the approval of the Bundesrat.

Section 17

Preparation and keeping available of documents

(1) An employer who employs workers in accordance with section 8 (1) of Book Four 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 Undeclared Work and Unlawful Employment is required to record the start, end and length of the daily working time of those workers no later than 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.

Sentence 1 applies accordingly to a user enterprise to which a temporary work agency temporarily supplies a worker or several workers to perform work in one of the branches of industry referred to in section 2a of the Act to Combat Undeclared Work and Unlawful Employment. Sentence 1 does not apply to employment relationships in accordance with section 8a of Book Four of the Social Code.

(2) Employers within the meaning of subsection (1) are required to keep available, in Germany and in German, those documents which are required for the monitoring of

compliance with the obligations under section 20 in conjunction with section 2 for the entire duration of the workers' actual employment within the area 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 are also to be kept available at the place of employment.

(3) The Federal Ministry of Labour and Social Affairs may, by way of a statutory instrument not requiring the approval of the Bundesrat, 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.

(4) The Federal Ministry of Finance may, in consultation with the Federal Ministry of Labour and Social Affairs, determine, by way of a statutory instrument not requiring the approval of the Bundesrat, how the employer's obligation to record the daily working time of those workers whom that employer employs and to retain those records may be simplified or modified insofar as the specific features of the work to be performed or service to be provided or the specific features of the respective economic sector or branch of industry so require.

Section 18

Cooperation between domestic and foreign authorities

(1) The customs authorities notify the competent local *Land* financial authorities of notifications made in accordance with section 16 (1) and (3).

(2) The customs authorities and other authorities referred to in section 2 of the Act to Combat Undeclared Work and Unlawful Employment may, in accordance with data protection regulations, also cooperate with authorities in other Contracting States to the Agreement on the European Economic Area which are responsible for carrying out tasks corresponding to those under this Act or for combating illegal employment or which can provide information about whether an employer is fulfilling the obligations under section 20. Rules governing international mutual assistance in criminal matters remain unaffected thereby.

(3) The customs authorities notify the Central Trade and Industry Register of any decisions on regulatory fines in accordance with section 21 (1) to (3) once they have become final if the fine amounts to more than 200 euros.

Section 19

Exclusion from public procurement procedures

(1) Applicants on whom a fine of at least 2,500 euros has been imposed on account of a breach of section 21 are generally to be excluded from participating in a tender for a delivery, construction or service contract of one of the contracting authorities referred to in sections 99 and 100 of the Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*) for an appropriate period until their reliability has been proven to be re-established.

(2) The authorities responsible for prosecuting or punishing the regulatory offences referred to in section 21 may, upon request, provide the information required to the public contracting authorities referred to in section 99 of the Act against Restraints of Competition and to those agencies which keep pre-qualification directories or directories of entrepreneurs and suppliers admitted by public contracting authorities.

(3) Within the framework of their activities, the public contracting authorities referred to in subsection (2) request information from the Central Trade and Industry Register regarding final decisions on regulatory fines imposed on account of one of the regulatory offences referred to in section 21 (1) or (2) or request applicants to make a declaration stating that the conditions for exclusion referred to in subsection (1) are not met. Where an applicant makes a declaration, the public contracting authorities referred to in 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*).

(4) In the case of contracts worth more than 30,000 euros, a public contracting authority as referred to in subsection (2) requests information from the Central Trade and Industry Register in accordance with section 150a of the Trade Regulation Code concerning the applicant who is to be awarded the contract.

(5) Applicants are to be heard before a decision is taken on their exclusion.

Section 20

Employer's duties to pay minimum wage

Employers established 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) sentence 1 no. 2 at the latest.

Section 21

Regulatory fines provisions

(1) Whoever intentionally or negligently,

1. contrary to section 15 sentence 1, in conjunction with section 5 (1) sentence 1 no. 1 or no. 3 of the Act to Combat Undeclared Work and Unlawful Employment, does not acquiesce to or does not cooperate with an audit,
2. contrary to section 15 sentence 1, in conjunction with section 5 (1) sentence 1 no. 2 of the Act to Combat Undeclared Work and Unlawful Employment, does not acquiesce to entry into property or business premises,
3. contrary to section 15 sentence 1, in conjunction with section 5 (5) sentence 1 of the Act to Combat Undeclared Work and Unlawful Employment, does not transmit data, does not do so correctly, in full, in the prescribed manner or in good time,
4. contrary to section 16 (1) sentence 1 or subsection (3) sentence 1, does not submit notification, does not do so correctly, in full, in the prescribed manner or in good time, or does not pass on notification, does not do so correctly, in full, in the prescribed manner or in good time,
5. contrary to section 16 (1) sentence 3, also in conjunction with subsection (3) sentence 2, does not give notification of changes, does not do so correctly, in full, in the prescribed manner or in good time,
6. contrary to section 16 (2) or (4), does not include an assurance, does not do so correctly or in good time,
7. contrary to section 17 (1) sentence 1, also in conjunction with sentence 2, does not prepare records, does not do so correctly, in full or in good time, or does not retain them or does not retain them for at least two years,
8. contrary to section 17 (2), does not keep available a document, does not do so correctly, in full or in the prescribed manner, or
9. contrary to section 20, does not pay the remuneration referred to therein or does not do so in good time,

is deemed to have committed a regulatory offence.

(2) Whoever has a significant amount of work performed or services provided by contracting, in the capacity as entrepreneur, another entrepreneur and knows or negligently does not know that that entrepreneur, in fulfilling the contract,

1. contrary to section 20, does not pay the remuneration referred to therein or does not do so in good time, or

2. uses a subcontractor or permits a subcontractor to act who, contrary to section 20, does not pay the remuneration referred to therein or does not do so in good time, is deemed to have committed a regulatory offence.

(3) In the cases referred to in subsection (1) no. 9 and subsection (2), a fine of up to 500,000 euros may be imposed for the regulatory offence, in the remaining cases a fine of up to 30,000 euros.

(4) 'Administrative authorities' within the meaning of section 36 (1) no. 1 of the Act on Regulatory Offences (*Gesetz über Ordnungswidrigkeiten*) are those authorities referred to in section 14, each in respect of their own remit.

(5) The Federal Administrative Enforcement Act (*Verwaltungs-Vollstreckungsgesetz des Bundes*) applies to enforcement in favour of the federal authorities and legal entities under public law directly under Federal Government control, as well as to enforcement of asset seizure in accordance with section 111e of the Code of Criminal Procedure (*Strafprozeßordnung*) in conjunction with section 46 of the Act on Regulatory Offences by the authorities referred to in section 14.

Division 4 Final provisions

Section 22 Personal scope

(1) This Act applies to workers. Interns within the meaning of section 26 of the Vocational Training Act (*Berufsbildungsgesetz*) are 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 up to three months as a period of vocational orientation or prior to commencing a higher education course,
3. an internship of up to 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 Book Three of the Social Code (*Sozialgesetzbuch 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 is 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*) who have not completed any vocational training are not 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 are not regulated by this Act.

(4) In the first six months of their employment the minimum wage does not apply to the employment relationships of workers who were classed as long-term unemployed within the meaning of section 18 (1) of Book Three of the Social Code immediately prior to starting their employment. On 1 June 2016 the Federal Government is to report to the legislative bodies as regards the extent to which the rule set out in sentence 1 has promoted the reintegration

of the long-term unemployed into the labour market and is to give an assessment regarding whether this rule should continue to apply.

**Section 23
Evaluation**

An evaluation of this Act is to be conducted in 2020.

**Section 24
(repealed)**