

# Labor Leasing in Germany:

## Ten points to keep in mind

1. A Temporary Employment Agency, as defined in the German Labor Leasing Act (Arbeitnehmerüberlassungsgesetz; "AÜG"), is any employer that, as part of its commercial activity, hires out employees (temporary employees) to a third party to perform work for them, irrespective of whether or not the agency operates for gain. Moreover, it does not matter what the relationship is being called by the parties.
2. Labor leasing performed as part of a commercial activity requires a license.
3. Labor leasing to companies of the construction industry for work that is usually performed by workers is prohibited. It is only permitted
  - ▶ between companies of the construction industry and other companies if such permission is provided for in collective agreements that are applicable to those companies and have been declared universally applicable;
  - ▶ between building companies if the supplier company can prove that it has been covered by the same framework and social security fund agreements or their universal applicability for no less than three years.
4. During their assignment at a user company, temporary employees are basically entitled to the same key working and employment conditions (principle of equality) that apply to a comparable employee of the user company, including pay [option 1]. The user company is obliged to provide the Temporary Employment Agency with the necessary information. If there is no comparable employee, the parties shall agree on the conditions that competitive companies apply.

An applicable collective agreement may alternatively provide for some sort of deviation of this principle, if certain statutory requirements are fulfilled [option 2]. But the collective agreement needs to be applied as a whole, not only partly.
5. The Temporary Employment Agency must have the necessary professional skills for employing employees and an adequate business organization. It is obligated to be compliant with the whole range of German employment, tax and social security law. Moreover, it is required that the agency can prove that the employee had initially received a special information brochure of the Federal Labor Office. The duration of a concrete hiring out to a certain user company is restricted to a maximum of 18 months.
6. In case of an audit, the competent authority especially reviews the following documents:
  - ▶ employment agreements that need to contain specific AÜG regulations, e.g. an annex showing the conditions that apply to a comparable employee,
  - ▶ agreements between the Temporary Employment Agency and the user company, and
  - ▶ time-sheets, payroll slips, sickness notifications, social insurance notifications, vacation request etc. of the employees.
7. In order to ensure wage and salary payments, the required liquidity/credit standing is EUR 2,000 per temporary employee employed with the agency, but in no case less than EUR 10,000 for all employees.
8. The processing of an application for the granting or renewal of a license is subject to a fee to be paid by the applicant. The fee amounts to
  - ▶ EUR 1,000 for the granting or renewal of a license of limited duration;
  - ▶ EUR 2,500 for a license of unlimited duration.

The license is granted for a limited period of one year, at first. It may be granted for an unlimited period of time if the Temporary Employment Agency has had a license and operated the business during three consecutive years.
9. No hiring out of employees is permitted prior to the license being granted. Illegal hiring forces the authority to impose severe fines together with a (possible) withdrawal of the permission.
10. The license is granted by specialized teams operating on a cross-regional basis at the labor offices of Düsseldorf, Kiel and Nuremberg.



**Dr. Eric Uftring**  
German Attorney at Law  
Certified Employment Law Specialist

WINHELLER  
Attorneys at Law & Tax Advisors  
Tower 185  
Friedrich-Ebert-Anlage 35-37  
60327 Frankfurt/Main  
Germany

+49 69 76 75 77 80  
[www.winheller.com/en](http://www.winheller.com/en)  
[info@winheller.com](mailto:info@winheller.com)

 [facebook.com/winheller](https://facebook.com/winheller)  
 [@WINHELLER](https://twitter.com/WINHELLER)