

## Self-employed – but only on paper? Do you know your rights?

Bienvenue

Willkommen

أهلاً وسهلاً

Welcome

خوش آمدید

You have fled your home country and are now working in Germany.

We – colleagues from the trade unions organized within the Deutscher Gewerkschaftsbund (German Federation of Trade Unions, DGB) – wish to welcome you. In this flyer we want to inform you about your rights in the German labour market. It tells you what you need to know about self-employment.

### What is fictitious self-employment?

Fictitious self-employment is illegal in Germany. Fictitious self-employment is the term used to describe a work situation in which an individual is ostensibly self-employed but is actually employed by another company. Employers in Germany often use this approach to avoid paying employee contributions and circumventing employees rights as set forth in applicable labour, social-security and tax laws.

## Check these points yourself: Are you an employee or a self-employed person?

**Self-employed** persons are their own bosses. They receive no work instructions from others and decide themselves how to perform the work they have been contracted to do.

**Self-employed** persons are paid to perform specific services and not for their working time. They negotiate the price for their services with their clients.

**Self-employed** persons bill their clients for the work they do. They know how much profit they have made only after deducting income tax, turnover and trade taxes, and contributions for health, pension and accident insurance and their professional associations. Self-employed persons whose clients fail to pay must bear their own losses.

**Self-employed** persons or their companies are liable for defective work. That can cost them a lot of money even years later.

**Self-employed** persons do not receive sick pay or vacation pay from their clients. They make their own decisions about when to take vacations.

**Self-employed** persons maintain their own workplace (office, warehouse etc.). They ordinarily purchase their own working materials. They are responsible for arranging transport of such materials themselves.

### What happens when the authorities determine that you are fictitiously self-employed?

Should the authorities determine that you are fictitiously self-employed and reclassify you as an employee, the client for whom you have been working will be required to pay all social-security contributions – for health, home nursing care, pension and unemployment insurance, etc. – as well as income taxes retroactively. You will also be required to pay your own share of social security contributions, but only for the last three months during which you were fictitiously self-employed, at most. You may also have to pay a fine for petty offence. Your contracting client could also face a fine of up to Euro 500,000.00.

**Employees** work for employers. They receive work instruction and are told what to do and when and where to do it.

**Employees** are paid a fixed hourly wage by their employers. The minimum wage is currently set at Euro 8.50 per hour (gross).

**Employees** are paid monthly or weekly and receive a pay slip from their employers. The employer is responsible for paying taxes as well as health insurance and social-security contributions, etc. Employees have the right to receive their wages, even if the employer suffers losses.

**Employees** receive their wages even if their work is deficient – except when damages are caused by gross negligence or malicious intent

**Employees** are entitled to continue receiving their wages when they are ill and take paid vacations as prescribed by law. They are required to plan vacation time in consultation with their employers.

**Employees** are not responsible for obtaining or transporting their own working materials or tools. That is the employer's responsibility.

### What can you do to protect yourself?

If you do not wish to be self-employed or have your own business, do not sign any service contracts, articles of association, do not sign any contracts to provide special services (Werkvertrag, Honorarvertrag or Gesellschaftsvertrag), nor make any entry into the trade registry (Eintrag ins Handwerksregister) and do not make any official business registration (Gewerbeanmeldung). We are aware of many cases in which people were registered as self-employed persons without their knowledge and were thus deprived of their rights as employees.

In any event, make sure you write down your daily working times (hours worked, breaks and overtime hours).

Collect additional information about your work:

- The name and address of the company that hired you and the names of the persons who issued work instruction to you,
- The exact address(es) of the place or places at which you work,
- The address of your overnight accommodation,
- The names (plus addresses and telephone numbers) of colleagues who can testify as witness on your behalf,
- Documents relating to your employment, such as your employment contract, or copies thereof.

If you suspect that you are actually working as a fictitiously self-employed person, contact an Advisory Centre or trade union office for advice and assistance.

## How can trade unions help?

Trade unions are committed to defending the rights of working people. They fight for fair pay, better working conditions, fair working hours and social justice. They can organize strikes and negotiate collective bargaining agreements with employers. Without the efforts of unions, the minimum wage of Euro 8.50 per hours introduced in 2015 would not exist. Unions are not connected with a political party or the government. They are independent, but not apolitical. They get involved in politics. More than six million people are members of a union in Germany. Different unions serve the needs of different occupational groups. Most of these unions are organized within the Deutscher Gewerkschaftsbund (DGB).

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**We recommend** that you become a union member on your first day of employment in Germany. Union members receive legal advice and assistance in cases involving labour disputes or other occupational issues.

The information provided in this flyer was compiled with great care and attention. No claim of completeness is made, however. Specific provisions may change over the course of time.

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