

Willkommen  
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# No pay – How do I sue in court?

## European Fair Mobility Project

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Advisory centres for mobile workers from Central and Eastern Europe  
[www.fair-labour-mobility.eu](http://www.fair-labour-mobility.eu)

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# How do I claim my unpaid wages in the labour court (Arbeitsgericht)?

Often, going to court is the only way to get your pay owed to you by your employer. Do not be intimidated by the thought of a court proceeding in Germany! Nevertheless, there are a few things you should know, if you plan to take a legal action in front of a court:

- ➔ Even if your employer has its headquarters in a foreign country, you can still file a lawsuit in a German court if you have worked in Germany.
- ➔ During the court procedure, you must be able to provide evidence of your working-hours by means of proper working-time documentation and witnesses.
- ➔ A court procedure in Germany can often take several months. You should not expect that the court procedure would end in less than half a year!
- ➔ Court procedures are often resolved through so-called 'settlements' (Vergleiche). That is when you come to a compromise, but your full demands are not met. Settlements are often reached much more quickly than court verdicts and a settlement can also be enforced as soon as it is reached.
- ➔ If your employer has declared insolvency, you can turn to the state employment agency, in order to receive the net amount of your unpaid wage. Be sure to apply for this so-called insolvency pay (Insolvenzgeld) in a timely manner!

**Caution:** There are deadlines (Ausschlussfristen) for starting a lawsuit against your employer concerning your unpaid wages. These deadlines are regulated either in your employment contract or in the applicable collective agreement. They can be very short (a few weeks or months). Be sure to check this! If you have missed the deadline, it is possible that the court does not accept your lawsuit. If this has happened to you, seek advice to find out if a lawsuit is still possible!

If you want to file a lawsuit in the court, you have 3 options:

1. You can represent yourself in court.
2. You can hire a lawyer to represent you.
3. Your union can represent you.

**Please note** that the following information is only for employees. For self-employed persons, there are other conditions and procedures. If in doubt, ask an advisory centre, to find out if you are legally considered an employee or self-employed.

	Represent yourself (or through a direct relative)	With a lawyer	With a trade union
Procedure	<ul style="list-style-type: none"> <li>➔ You go to the special office of a German labour court (Arbeitsgericht), the so-called "Rechtsantragsstelle", where your oral complaint will be registered. You should go there accompanied by a German-speaking person.</li> <li>➔ You must appear in person for the court hearing and submit your evidence.</li> <li>➔ Request an interpreter for the court proceedings.</li> </ul>	<ul style="list-style-type: none"> <li>➔ You choose your own lawyer. Ask in the advisory centre for lawyers who speak your language.</li> <li>➔ They will advise you as to whether your case has a reasonable chance of success.</li> <li>➔ The lawyer files your lawsuit and attends all court hearings.</li> <li>➔ You must maintain contact with the lawyer for the duration of the court case (even if you are abroad).</li> </ul>	<ul style="list-style-type: none"> <li>➔ As a union member, you are entitled to free legal advice.</li> <li>➔ You must be a member for at least 3 months, before you are entitled to be represented by the union in the labour court.</li> <li>➔ The union represents you in court and also attends the scheduled hearings.</li> <li>➔ You must maintain contact with the union for the duration of the court proceedings (even if you are abroad).</li> </ul>
Costs	<ul style="list-style-type: none"> <li>➔ There is a risk that you will have to carry the costs for postage, the interpreter and the court fees if you lose the case. Also maybe the potential travel costs relating to the attendance at the court hearings.</li> <li>➔ Court fees do not have to be paid in advance. They are usually not very high and are waived if there is a settlement.</li> <li>➔ At first instance, you do not have to pay the costs of the lawyer of your opponent, even if you lose.</li> </ul>	<ul style="list-style-type: none"> <li>➔ The lawyer can set the advisory fee himself. But the legal fees you pay to the lawyer for his work during the court proceeding, vary. However, they are based on the value of your lawsuit (Streitwert), which is the amount you are claiming. Ask in advance what the costs will be!</li> <li>➔ If you have very little income, you can go to the local court (Amtsgericht) and apply for a certificate for legal aid (Beratungshilfeschein), which entitles you to receive nearly free legal advice from a lawyer of your choice.</li> <li>➔ The lawyer can also apply for state financial aid (Prozesskostenhilfe) to pay your court costs. If this is granted, you will not be required to pay for the lawyer while the case is being heard, nor will you have to pay court fees. You must give detailed information about your personal and financial situation and repay the financial aid if your income rises within four years of the end of the case.</li> </ul>	<ul style="list-style-type: none"> <li>➔ The union pays all costs of the lawsuit, regardless of the outcome.</li> <li>➔ The cost of a union membership is usually 1% of your monthly gross pay.</li> </ul>
Pros and Cons	<ul style="list-style-type: none"> <li>➔ There are no lawyer's fees, but you will also have no expert advice.</li> <li>➔ Tip: You can get counselling and legal advice by a lawyer and then represent yourself in court (see right).</li> <li>➔ A court case requires strong expert knowledge and also the language demands are very high. If your opponent has a lawyer and you don't, it can diminish your chances for success.</li> </ul>	<ul style="list-style-type: none"> <li>➔ You get expert advice and the lawyer represents you in court, raising your chances for success.</li> <li>➔ You must carry the costs for the lawyer if no financial legal aid is granted.</li> <li>➔ You can remain in your home country while the court proceedings take place in Germany.</li> </ul>	<ul style="list-style-type: none"> <li>➔ You have no costs outside your union membership fees.</li> <li>➔ You receive expert advice and a lawyer represents you in court, improving your chances for success.</li> <li>➔ You can remain in your home country while the court proceedings take place in Germany.</li> </ul>

**We recommend** that you become a union member from your first day of employment in Germany! Contact the union responsible for your branch of work. If you aren't sure, ask an advisory centre. If you are already a union member in your home country, ask if your membership will be accepted temporarily in the German trade union.