

Willkommen
Dobrodošli! Welcome
Bun venit! Добро пожаловать

Do you know your rights?
Check your employment status!

Self-employed – only on paper?

European Fair Mobility Project

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Advisory centres for mobile workers from Central and Eastern Europe
www.fair-labour-mobility.eu

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Funded by:



Hans Böckler
Stiftung



Project partners:



You are working in Germany, but you do not know if you are working as an employee or if you are self-employed?

Check these facts yourself: Am I an employee or a (fictitiously) self-employed?

- ➔ **A self-employed person** is his or her own boss. Self-employed persons do not get work instructions from others and they decide themselves how to carry out a work they have agreed to do.
- ➔ **Self-employed persons** are paid for a particular work, not for their working time. They negotiate the price for this with their contractor.
- ➔ **Self-employed persons** write invoices to bill their clients for the work. They only know their profits after deducting income tax, sales and service tax, health insurance, pension contributions, accident insurance or contributions to their professional association. If their clients fail to pay, self-employed persons take the loss themselves.
- ➔ **Self-employed persons** or their company are liable for defective work. That can cost them a lot of money many years down the road.
- ➔ **Self-employed persons** do not get sick pay or vacation pay from their clients. They decide themselves when they take vacation.
- ➔ **Self-employed persons** have their own workplace (office, warehouse, etc.). They usually buy their own working materials or tools and take care of their own transport.
- ➔ **Employees** have an employer. They get working instructions and are told when and where they have to perform a task.
- ➔ **Employees** get a fixed hourly wage from their employer. A national minimum wage of 8,50 € with few exceptions takes effect on 1 January 2015 in all Germany. Ask at the local union, or at an advisory centre, or look on the internet under: www.mindestlohn.de.
- ➔ **Employees** are paid monthly or weekly and get a pay slip from their employer. The employer takes care of paying taxes, health insurance and social security contributions. Employees have the right to their wages, even when the employer is making losses.
- ➔ **Employees** get their wages even if their work is deficient – except if damages are caused by reckless behaviour or inflicted deliberately.
- ➔ **Employees** have the right to continue receiving their wages when they are ill, and to take their legally mandated vacation and to get paid when on vacation. They have to agree with their employer when they can take vacation though.
- ➔ **Employees** do not have to provide their working materials, tools or transport. This is a responsibility of the employer.

Be careful and inform yourself:

If you don't want to have your own business or be self-employed, then 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 know of many cases in which people were registered as self-employed without knowing. By doing this, you will be deprived of your rights as an employee.

If the authorities determine you are working in fictitious self-employment (Scheinselbstständigkeit), you will be retroactively put into the category of employee (Arbeitnehmer). Your contractor will then have to make all the payments for social insurance and income tax retroactively. You will also have to make the same back for yourself, but only for a maximum of the last 3 months. It could be that you will have to pay a fine (Geldbuße) for a petty offence (Ordnungswidrigkeit). Your contractor could face a fine of up to 500.000,00 euro.

If you suspect that you are working in fictitious self-employment, report this to a union or to an advisory centre. We can give you tips about what to do.

Remember: Whoever lures you into a job in which you are self-employed against your will, is trying to deprive you of your rights as a worker.

We recommend that you join a union on your first day in Germany! Contact the union that represents your industry. If you are not 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.

Regardless of whether you are working as a (fictitiously) self-employed person or as an employee, you should always write down your daily working times – hours, breaks and overtime.

If you are afraid that you will not get paid, collect further evidence of your work:

- The name and address of the company that hired you and the people who are responsible for giving you work instructions
- The exact address of the place you work
- The name of any other companies that are active where you work
- The address where you are living
- Photos of your workplace or your lodging
- Names, addresses and Tel.: numbers of your colleagues
- Your work contract, or copies thereof, and any other documents in connection with your work.