

The key differences

Contracts for work and services and temporary work are often lumped together. However, these are two entirely different legal arrangements. The difference is already apparent in the subject matter of the contract; in contracts for work and services, the obligation is to produce a specific work, i.e. a particular result. How this work is carried out, including

the number of staff involved, is entirely at the discretion of the contracted company. In the case of temporary work, however, personnel are temporarily made available to a client company to carry out work. The temporary workers are subject to the client's instructions during their assignment and are also integrated into the client's workforce.

	Contract for Work and Services	Temporary Work
1. Legal Basis	§§ 631 et seq. of the German Civil Code (BGB)	Act on Temporary Employment (AÜG)
2. License required	No	Yes
3. Information and Notification requirements	No	Information, Specification and Notification Obligations
4. Oversight	Customs Authorities	Federal Employment Agency & Customs Authorities
5. Minimum Remuneration	Statutory minimum wage: €13.90 per hour	Collectively agreed generally binding minimum wage: €14.96 per hour
6. Sub-Sub-Constellations	Possible	Prohibited
7. Employee representation and veto rights within the host company	Only advisory and information rights, no veto-rights	Yes
8. Time Limit	None	Maximum assignment period of 18 months (subject to variation under a collective agreement)

1. Legal Basis

The contract for work and services is governed by the German Civil Code (BGB). The provisions contained therein relate exclusively to the subject matter of the contract, namely the work to be performed. Employees' rights are not addressed. Workers employed under a contract for work and services are subject to general employment law.

Employee Assignment (hereafter: temporary work) is governed by the Act on Temporary Employment (AÜG). The AÜG contains specific provisions for the protection of temporary workers, who are also subject to general labour law.

2. License required

As a rule, no license is required for the execution of a contract for work and services.

On the other hand, temporary work in Germany may only be carried out with an official license. The Federal Employment Agency (BA) may refuse to grant or may withdraw such a license.

3. Information and Notification requirements

There are no legal provisions in this regard for contracts for work and services.

Temporary agency work is subject to clear identification and disclosure requirements. The temporary agency worker must be informed in advance by the temporary employment agency if their assignment is carried out under temporary agency work (so-called information requirement). The contract concluded between the client and the temporary employment agency must be designated as a temporary agency work contract (AÜV) (so-called designation requirement). Before the start of the assignment, the temporary agency worker must be clearly identified by name either in the AÜV itself or in a referenced document (so-called specification requirement).

4. Oversight

For contracts for work and services, customs authorities are entitled under the Act to Combat undeclared Work and unlawful Employment (Schwarzarbeitsbekämpfungsgesetz) to verify whether the arrangement is genuinely a contract for work and services and not disguised temporary agency work.

Temporary employment agencies are monitored by the Federal Employment Agency and the customs authorities to ensure compliance with all statutory and collective agreement provisions.

5. Minimum Remuneration

Contractors under a contract for work and services working in Germany must comply with the statutory minimum wage (currently €13.90 per hour) and any generally applicable requirements under the Posted Workers Act. Provided they are not bound by collec-

tive agreements, there are no further requirements regarding remuneration.

Almost 90 per cent of employment contracts in the temporary work sector are covered by collective agreements – more than in any other sector. These collective agreements set out, among other things, the generally binding minimum wage of €14.96 per hour, sector-specific supplements and inflation adjustment allowances. Generally binding regulations must also be observed.

6. Sub-Sub-Constellations

There are no statutory provisions governing this in the case of contracts for work and services. Therefore, unless this is expressly excluded in the contract, the actual performance of the contract may be delegated to a chain of subcontractors.

Under the law governing temporary work, there must be an employment contract between the temporary worker and the temporary work agency. Chain assignments are therefore prohibited under national law.

7. Employee representation and veto rights within the host company

Where contracts for services are used, the works council has only the right to be consulted and informed. It has no right of co-determination regarding whether work processes may be outsourced under a contract for work and services.

Where temporary workers are used, the works council may refuse their deployment if there are valid grounds for doing so. Furthermore, with regard to temporary workers, the works council is entitled to the full range of rights provided for in the Works Constitution Act.

8. Time Limit

There is no time limit on contracts for works and services; they can be awarded on a permanent basis.

A maximum assignment period of 18 months applies to temporary work at the same client company. Exceptions to this rule are permitted only under collective agreements, which can be concluded solely by employers and trade unions in the relevant sectors.

LEGAL NOTICE

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