

## How can contracts for work be structured well and fairly?

### Workforce representation

#### Exercise your rights to information

- Procure contracts from the external companies, collect information
  - about time schedule, work tasks, place of work,
  - human resources planning, vocational training,
  - changes in working procedures, and new working methods.

#### Significance and effects

- Clarify the impact on employees' work and pay conditions.

#### Formulation of the panel's objectives

- What do we want to achieve? Acceptance, regulation or no use of contracts for work?
- Define priorities.

#### Develop a strategy and actions

- Check actual implementation: false self-employment, employee leasing,
- inform and mobilise the company publicity,
- exercise co-determination,
- conclude a works or service agreement.

#### Target achievements

- Find deviations,
- check regulations.

### Employees

- Get information about the different types of employment contracts in advance.
- Have the employment contract explained and translated if necessary.
- Refuse to sign unknown documents or contract amendments.
- Always record your own working time.
- In the event of suspected abuse of the contract for work and services, seek the assistance of the specialist advisory centres.
- Start a discussion with the works council or the staff council of your own employer or at the employing company.
- Take a look at what the trade union employee representatives have to offer.
- In the case of false self-employment, document the instructions from the employer. As a result of a status action, employee status can be established and employee status can be asserted with outstanding wage claims.
- Alternatively, it is also possible to make use of the German pension insurance investigation procedures

## Support and contact

### Making the free movement of workers fair

Employees from EU countries are advised and supported in asserting their rights.

#### Advisory centres in:

**Düsseldorf** +49 (0)211 9380051

**by email:** [guia@aulnrw.de](mailto:guia@aulnrw.de)

**Dortmund** +49 (0)231 54507986

**by email:** [strato@aulnrw.de](mailto:strato@aulnrw.de)

[www.bit.ly/2vxBEHB](http://www.bit.ly/2vxBEHB)

*A quick call is all it takes, we will call you back!*

### Service point for fair temporary employment and contracts for work

The advisors are available to answer any question you may have regarding temporary employment and contracts for work.

**Monday to Friday**

**from 8 am to 6 pm**

**+49 (0)211 – 837 1925**

**by email:** [tbs-zeitarbeit@tbs-nrw.de](mailto:tbs-zeitarbeit@tbs-nrw.de)

Free training offers, among other things for workforce representation and further information can be found at

[www.zeitarbeit.nrw.de](http://www.zeitarbeit.nrw.de)

**TBS NRW · Regional Office Düsseldorf**  
**Harkortstraße 15 · D-40210 Düsseldorf · Germany**  
**Fax 0211 / 17 93 10-29**

A service offered by the DGB NRW and the North Rhine-Westphalia government

**Guide to contracts for work**

- What rights do I have with regard to occupational health and safety?
- How can I find out if a collective agreement applies to me?
- Who will finance suitable further training for me?
- What do employers and employees have to consider in the case of a „mini-job“?

Answers to these and many other questions can be found on the website [www.gute-arbeitswelt.nrw](http://www.gute-arbeitswelt.nrw). Moreover, you will find important information, practical examples and current news and dates on the topics of fair employment, digitalisation, occupational health and safety, legal issues and co-determination.

The aim is to strengthen the collective bargaining partnership, co-determination and employee rights, to promote employment subject to social security contributions and occupational health and safety, and to exploit the opportunities of digitalisation for good work.

The website is operated by the G.I.B. in cooperation with the Ministerium für Arbeit, Gesundheit und Soziales (ministry of labour, health and social affairs) (MAGS) NRW and the Landesinstitut für Arbeitsgestaltung (state institute for work structures) (LIA.nrw).

You can find further information under

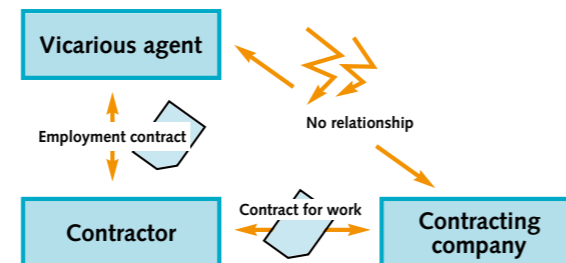
[www.gute-arbeitswelt.nrw](http://www.gute-arbeitswelt.nrw)

**§ 631 German Civil Code (BGB)**

(1) The contract for work obliges the business operator to produce the promised work and the contracting company to pay the agreed remuneration.

(2) The object of the contract for work can be both the production or modification of an object or another result to be achieved through work or services.

(3) The contractor may use „vicarious agents“ (their own employees) to perform the contract. These fulfil the order of the contracting company.



**Delimitation of service contract**

Compared to a contract for work, a service contract (§ 611 BGB) does not achieve a result, but rather the performance of a service. The economic risk is borne by the contracting company, in the case of a contract for work, by the contractor. In most cases, contracts for work are billed according to results and contracts for services are billed according to hours.

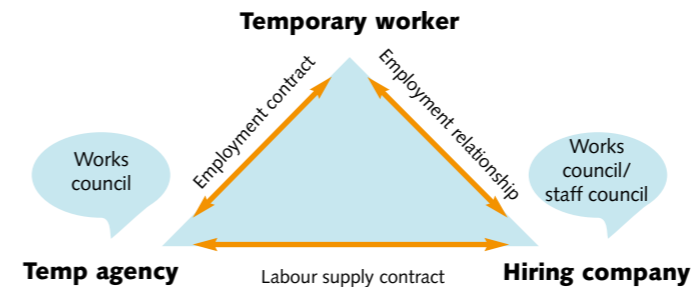
Section 611a, which was introduced into the BGB on 1 April 2017, defines the term „employee“. The criteria described in this paragraph can be used to distinguish false self-employment or illegal hiring out of employees from correct contracts for work.

- The right to issue instructions regarding the content, execution, time and place of the activity lies with the work company.
- Specified work product or defined service.
- Performance-based billing after completion of the work.
- The contractor uses their own machines, tools or laptops.
- The work contracting parties are liable for damages and rectifying defects.
- Vicarious agents (own employees) only work within the scope of the subject matter of the contract (e.g. no sickness replacements of employees of the contracting company).
- The working time is recorded by the work contracting company.

**What are the possible abuses of contracts for work?**

- False self-employment: Works in a self-employed capacity, although legally an employment relationship with the employing company exists.
- Sham contract: Use as a vicarious agent, although legally employee leasing takes place.

In both cases, the criterion of delimitation is the integration into the operational organisation of the employing company. A final assessment of all the circumstances must be made on the basis of the above criteria.



State and employers' liability insurance association regulations stipulate that the employer of the employees – and this is the contractor when employees are deployed in external companies – is primarily responsible for occupational safety:

- Arbeitsschutzgesetz (occupational health and safety act) (§ 8)
- DGUV (institute for work and health of the German social accident insurance) Regulation 1 „Principles of Prevention“ (§ 6)

**Possible risks of contract workers:**

- You do not know the environmental hazards at the employer's site.
- You do not have a company contact person.
- Employees working for the contract workers may lack instructions regarding conduct towards employees of the employer.

**In order to ensure that the use of external companies is as safe as possible, the works council can participate in the:**

- preparation of the bill of quantities, selection of the external company and determination of the health and safety regulations,
- determination of persons responsible for the order,
- instruction of employees,
- control of the measures,
- conducting feedback sessions and evaluate contractor.

**Support and contact**

NRW occupational health and safety telephone  
Monday to Friday – 8 am to 6 pm  
**+49 (0)211/855-3311**

You can also use KomNet, the online portal for occupational health and safety:

[www.komnet.nrw.de](http://www.komnet.nrw.de)