

NRW Occupational Safety Hotline

Mo. to Fr. 08:00 AM – 6:00 PM

0211-855 33 11

KomNet

The online occupational safety portal:

www.komnet.nrw.de

Good Work NRW

What rights do I have as an employee?

What do employers and employees need to know regarding mini-jobs?

How can I find out whether a collective agreement applies to me?

What belongs in an employment contract?

Answers to these and many other questions are available on the website

www.gute-arbeitswelt.nrw

The website also provides important information, practical examples, and current reports & events focused on the issues of fair employment, the digitisation of occupational safety, legal matters, and co-determination.

The website is operated by the G.I.B. - Gesellschaft für innovative Beschäftigungsförderung mbH in cooperation with the Ministry of Labour, Health and Social Affairs (MAGS) NRW, and the Landesinstitut für Arbeitsschutz und Arbeitsgestaltung (LIA - State Institute for Occupational Safety and Job Design).

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Also visit our home page
www.zeitarbeit.nrw.de

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NRW DGB Deutscher Gewerkschaftsbund

TBS NRW



Contracts for work guidebook

We support employers in designing fair temporary work and contracts for work



Servicestelle
Faire Zeitarbeit und Werkverträge

What is a contract for work?

In contracts for work (Sec. 631 BGB - German Civil Code), the contractual parties agree to set work or a defined performance in exchange for a certain monetary value, the compensation.

Examples of contracts for work:

- Building contracts define the process for constructing a clearly defined building project.
- Repair or maintenance contracts are concluded for the purpose of restoring the function of a machine or device.
- Software programming must be carried out such that a program can fulfil certain functions, etc.

Difference from a service contract

In contrast to a contract for work, in a service contract (Sec. 611 BGB), payment is not dependent on results. You can take advantage of a lawyer's services, for instance, but you cannot make payment dependent on whether you are successful before the courts.

Contracts for work require that contractors function as economically independent actors. If this turns out not to be the case in practice, then this may result in legal problems. What was contractually agreed to is unimportant, only the actual actions of the parties are considered. The following criteria can help when reviewing a contract for work:

Criteria for contracts for work

- Clearly defined result or performance is compensated
- Contractor performing the work uses their own work materials, like machinery, tools or laptops
- Contractor performing the work is liable for damages or defects
- Contractor performing the work independently handles personnel planning and uses its own time recording system
- Employees of contractor do not receive work instructions regarding the location of work, timing or their duties from the client

During court reviews, a **weighing of all overall** circumstances is always carried out. This means that individual criteria are not sufficient to complete the assessment, which makes such evaluations complicated, and subject to legal uncertainty.

Unfair contractual design and its consequences

Contract for work with staff deployment: Illegal personnel leasing

If employees under a contract for work receive work instructions from employers, for instance, this may result in "illegal personnel leasing".

This is problematic because an entirely different set of statutory provisions, entitlements under collective bargaining agreements, and liability regulations apply to personnel leasing (temporary work). In addition, in contrast to contracts for work, personnel leasing is subject to stronger co-determination rights for the Works Council.

Contract for work without staff deployment: False self-employment

A situation is considered false self-employment if self-employed persons carry out a contract for work from a formal standpoint, but in reality are engaged in dependent employment.

In contrast to employees, self-employed persons are not entitled to assert claims under labour law. These include, for instance, claims to the minimum wage, minimum vacation time, continued wage payments in case of illness, protection against termination or coverage under the social insurance system.

Recognising false self-employment

Sec. 611a BGB describes the characteristics used to differentiate dependent employment from true self-employment:

An individual is considered an employee if they

- work in the service of another,
- are bound to their instructions, other-directed
- and working in a relationship of personal dependency.

Likewise, all overall circumstances are weighed when recognising false self-employment.

Deutsche Rentenversicherung (DRV) makes a decision on this through so-called status assessment proceedings.

If both parties agree that the employment relationship is a dependent one, then no review is required.

False self-employment does not always result from a fraudulent contract for work; self-employed persons can also enter into fraudulent service contracts.

Legal framework for occupational safety

In case of a collaboration between multiple employers, occupational safety measures must be coordinated between them in accordance with state (Sec. 8 of the Occupational Safety Act) and trade union regulations (Sec. 6 DGUV regulation 1).

This is the case if employees are working in third-party companies of the contracting company.

Possible risks faced by employees under a contract for work:

- They are not familiar with the hazards present in the company where they are deployed
- They have no company contact persons

To make deployment at a third-party company as safe as possible, the Works Council can be involved in:

- Creating the service specifications
- Selecting the third-party company and defining the occupational safety regulations
- Identifying the person responsible for the order
- Training employees
- Controlling measures
- Holding feedback meetings and evaluating the third-party company

If you are a Works Council or information centre and you are interested in our training formats on contracts for work, please get in touch with us.