

# 4

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## German Minimum Wage Act (MiLoG – Mindestlohngesetz) Important facts to know!

### Preface

On 01 January, 2015 the German Minimum Wage Act became effective. The new law compels a national minimum wage in Germany as in many other countries (e.g. France, Japan, Luxembourg, the Netherlands, UK, USA, etc.). Accordingly, the Minimum Wage Act obliges employers to pay a minimum statutory wage of EUR 8,50 (gross per hour) which will be monitored by the Tax Enforcement Unit for Undeclared Work ("Finanzkontrolle Schwarzarbeit") which is part of the customs authority.

### Scope of application – who is entitled?

In principle, all individuals who are employed in the territory of the Federal Republic of Germany are entitled to the statutory minimum wage. The law does not distinguish between domestic and foreign employers due to the fact that the Minimum Wage applies to foreign employees if such employees perform work in Germany.

Therefore, companies who assign or hire foreign employees ("Inbounds" / "Localizations") from low-wage countries to work in Germany certainly need to be very sensitive to this topic.

### Exceptions

There are exemptions in certain areas on the basis of generally binding collective bargaining agreements, statutory ordinances as well as for the newspaper delivery staff until the end of 2017, but the employers will have to pay the minimum wage from 01 January 2017.

Even interns are in principle also entitled to the minimum wage in case of performing ordinary work. Regarding these internships a few exceptional cases exist. Each of these shall be individually examined. Furthermore, minors who have not completed their vocational training as well as volunteers and employees working as a part of their vocational training programs are not covered. In case of long-term unemployed individuals (one year or more) the minimum wage shall not apply during the first six months of their employment to foster a re-entry into employment.

### Imperative nature

Moreover, the minimum wage is indispensable. Circumventing arrangements are void as well as waivers. Even forfeiture is excluded. The only possibility to abstain from such claims would be a court settlement.

### Liability of the contractor

If the contractor or subcontractor does not pay the minimum wage to the employees performing the ordered work or services, the contracting entity is liable to the net wages (the amount after deduction of taxes and contributions to social security and promotion of employment or corresponding expenses for social security). It should be noted that there is no exculpation. However, several possibilities exist to reduce this risk.

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**Documentation duties**

On the basis of the Minimum Wage Act employers have to fulfil several reporting and documentation duties. Certain employers have to record the beginning, the duration as well as the end of the daily working time of their employees no later than seven days following the performance of the executed workday. These records have to be retained for inspection by the authorities for at least two years. For examination purposes, these employers have to retain these records in German at the location of the employment. However, the law also imposes additional reporting requirements on employers based outside of Germany.

**Penalties in the event of non-compliance**

Violations of the obligation, such as not paying the minimum wage or not paying it in time may incur a fine of up to EUR 500,000. Furthermore, fines of more than EUR 2.500 could also lead to an exclusion from being awarded by public sector contracts.

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*Information on our own behalf:*

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With its broad international network throughout academia, numerous industries and the tourism sector, China-Kommunikation is a strong partner for your intercultural communication and marketing success: <http://china-kommunikation.de>

For further information or if you have any questions about this topic please do not hesitate to contact us.

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