



German-British
Chamber of Industry & Commerce
Deutsch-Britische
Industrie- und Handelskammer

Application for a labour leasing licence in Germany (for entities within the EU/EWR)

What is labour leasing (“Arbeitnehmerüberlassung”)?

Arbeitnehmerüberlassung is defined in § 1 of the Labour Leasing Act: an employer (“the agency”) leases employees in the course of their economic activity to third parties (“the hirers”). Thus, the employee is employed by the agency, but works for a hirer on a temporary basis. It is always the agency that is responsible for the deduction of taxes, social security contributions etc because the employment relationship between employee and agency continues even when the employee works for a hirer. In a nutshell, labour leasing means: the agency assigns its right to supervise and direct the employee to the hirer and thus the employee becomes temporarily a part of the hirer’s team without being the hirer’s employee.

Labour leasing in Germany can only be undertaken legally if the agency has a labour leasing licence.

If you believe you will not need a licence because you have no employment relationship with the person or company whose services you want to sell to a customer based in Germany, think again. It is not the wording of the contract that is decisive, but the way the parties put the agreement into action.

What happens if an agency supplies employees to hirers and does not have a labour leasing licence?

This would be a case of illegal labour leasing with two major effects.

- The agency can be fined by the labour authorities, criminal proceedings may be started against its directors and the agency may be barred from carrying out the business in future.
- More importantly from the hirer’s perspective, pursuant to §§9,10 of the Labour Leasing Act the employee who works for an unlicensed agency can be deemed to be the hirer’s employee as of the point in time when he / she started to work for the hirer.

Labour leasing distinguished from other types of contract

Not every use of outside staff constitutes labour leasing. If, for example, an individual is (genuinely) self-employed, and thus will not work under the hirer’s supervision and direction, no licence will be necessary, nor will there have to be an employment contract between the agency and the individual.

Requirements

In order to obtain the labour leasing licence you will usually need to submit around 8-10 documents in German (and English) including two contracts, confirmations by various German authorities, your bankers etc.



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Our Service

We have successfully handled the application procedure for many British companies and for their German subsidiaries in the past. If you appoint us, we will

- prepare a checklist of all documents required, we will provide draft texts where necessary, and guidance
- provide you with two bilingual contracts which are acceptable to German authorities and are in line with German labour leasing legislation; (any wishes on your part to include amendments would have to be checked by us and may lead to increased charges, depending on the work involved)
- translate all necessary documents to be submitted into German where applicable
- provide you with an English translation of the leaflet which you generally have to hand out to leased staff members in German, but at their request in English if this is their native language
- prepare the application form for you so that it is ready for signature
- liaise with you and the German authority until the licence is granted
- send you a list of terms and conditions imposed upon you in English
- remind you to apply for the renewal.

Once you have the licence

Even after obtaining the licence there are a number of conditions and burdens imposed on you, which will have to be strictly observed.

You should bear in mind that generally the principle of equal treatment will apply to you. This means that you would be required to give your employees substantially and at least the same employment terms and conditions as enjoyed by the hirer's comparable employees. This would not just involve the basic salary but also the working time, overtime payments and holidays. The principle of equal treatment does not apply, if your employment contract is subject to a German collective agreement ("*Tarifvertrag*"), but you will be obliged to pay your employees at least equally to the hirer's employees after a period of 9 months. A further exception will only be possible if an additional collective agreement relating to pay is applicable in your sector.

The licence needs to be renewed annually for the first 3 years. After that, you can apply for a permanent licence, provided that you have used it continuously throughout the 3 years.

Fees

Our fees amount to £ 250 (plus VAT) per hour. We envisage spending around 12-18 hours in total until the application together with all required documents and translations can be sent off.

Please note that in some instances we will have to spend more than 18 hours – this may for example be the case if you have complex business structures, if we need to restart collecting the documents as some are already out of date, or significant changes to the contracts provided by us are necessary.

In view of the considerable amount of time we have to spend on this project, we would appreciate it, if you could pay us £ 2,100.00 incl. VAT (i.e. 7 hours at £ 250 plus VAT) on account, if you wish us to proceed with this project. Our fee does not include the € 1,300 admin fee, which you will have to pay to the *Bundesagentur für Arbeit*. It does not include the applicable fees payable for certain confirmations you will need to obtain from German authorities either. To give you an idea, a common fee would be € 13,00 per document in some cases.



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Licence holders after 01 January 2021:

British entities are no longer eligible to hold a German labour leasing licence. Only entities within the EU/EEA can be licence holders. If you would like to apply with your German entity, we will be happy to support and guide you through the application process.

Order form

☐ Please handle my application for a labour leasing licence

☐ I accept that I will be billed on an hourly basis at a rate of £ 250 (+VAT). This service usually requires 12-18 hours' work.

☐ I have made a BACS payment of £ 2,100 to the Chamber's bank account at Barclays Bank, Sort Code 20 06 13, Account No. 203 946 10, IBAN GB53 BUKB 2006 1320 3946 10, BIC BUKBGB22, and a copy of the transfer document is attached.

Your details:

Company name _____

Company number _____ Contact _____

Address _____

Telephone _____ Email _____

Web _____

☐ Please tick this box if you would like to receive our newsletter, invitations to our events and invitations to participate in the Chamber's surveys. We confirm that we will not share your personal data with any other organisation and that you can withdraw your consent at any time by contacting us by email (mail@ahk-london.co.uk), fax or letter. For our Website Privacy Policy and information please see: <https://grossbritannien.ahk.de/en/privacy-statement/>

Date _____

Signature _____