



The minimum wage

Questions and answers



Federal Ministry
of Labour and Social Affairs

THE
**MINIMUM
WAGE**
IS WORKING

*It's not something you are given;
it's something you earn.*

www.der-mindestlohn-wirkt.de

Dear Reader,

The minimum wage is in effect - and you have a right to it. The most important social policy reform of recent years has been a success: Many marginal jobs have become regular employment with mandatory social insurance, more people are working and wages have risen. We have taken a big step forward in terms of social justice in Germany.



The prosperity we enjoy in Germany is something we work together to achieve. It is based on the good work of millions of people in our country. The minimum wage ensures that everyone benefits from the success we work together to achieve and provides decent wages, especially in industries where previously low wages were common. The minimum wage ensures that work is valued properly, shows employees recognition for their performance, and lays the foundation for continued prosperity and success in our country while strengthening social cohesion. This is important because when we do not appreciate work, we undermine our common foundations.

The minimum wage is in the hands of the social partners from labour and business. In the Minimum Wage Commission they decide together on adjusting it to economic and collective-bargaining developments. This cooperation has a long tradition in Germany and it works well. Its effectiveness has been demonstrated by the Commission's binding proposal to raise the minimum wage from 8.50 euros to 8.84 euros starting on 1 January 2017, a move that will mainly benefit those who have to make every cent count.

That is how responsible social partnership should work. That is the way to work together to make Germany strong.

A handwritten signature in black ink, which reads "Andrea Nahles". The signature is written in a cursive, flowing style.

*Andrea Nahles
Federal Minister of Labour and Social Affairs*

Questions and answers about the minimum wage

How much is the minimum wage?

When it came into effect on 1 January 2015, the minimum wage was 8.50 euros. Based on the minimum wage proposal of the Commission it rose to 8.84 effective 1 January 2017 with the next adjustment to be made starting 1 January 2019.

Why was a statutory minimum wage introduced in Germany?

A general statutory minimum wage protects workers in Germany against unreasonably low wages and thus helps make competition fair and effective while generating greater stability for Germany's social security systems.

What is the legal basis for the minimum wage?

The minimum wage is regulated by the Minimum Wage Act. In addition to this, binding sectoral minimum wages can be negotiated on the basis of the Posted Workers Act and the Temporary Employment Act.

Is there a transition period?

In a gradual transition period until 31 December 2017, sectoral minimum wages based on the Posted Workers Act and the Temporary Employment Act may be below the statutory minimum wage, but starting 1 January 2017, they must be set at least at 8.50 euros. Effective 1 January 2018, the general statutory minimum wage that has been set by the Minimum Wage Commission will apply without restriction.

Which rule applies to newspaper delivery?

For those delivering newspapers, the Minimum Wage Act provides for a gradual alignment with the statutory minimum wage during the transitional period. Starting 1 January 2015, they began receiving at least 75 percent of the minimum wage of 8.50 euros applicable at the time. Starting 1 January 2016 that rose to at least 85 percent of the applicable minimum wage. From 1 January 2017 until 31 December 2017 the minimum wage will be 8.50 euros. Starting 1 January 2018 those delivering newspapers will be paid the minimum wage set by the Minimum Wage Commission without any restrictions.

Who benefits from the minimum wage?

The minimum wage protects workers in the low-wage sector against having their wages undercut. The minimum wage also helps ensure that businesses do not compete by agreeing ever lower wages at the expense of workers, but that competition is on the basis of better products and services. It has also been possible to convert instances of minor employment (so-called mini-jobs) into employment with mandatory social insurance.

To whom does the general minimum wage apply?

The statutory minimum wage applies to all workers over the age of 18. To make it easier for the long-term unemployed to enter the labour market, in their case the minimum wage may be waived during the first six months of employment.

To whom does the general minimum wage not apply?

The following are not employees within the meaning of the Minimum Wage Act:

- Anyone who is a trainee under the Vocational Training Act
- Persons active as volunteers
- Persons completing a volunteer service programme
- Anyone participating in an employment promotion measure
- Home workers as defined by the Home Work Act
- Self-employed persons

Does the minimum wage apply to pensioners?

Yes.

Does the minimum wage apply to young people?

For young people under 18 without completed qualifications, the general minimum wage does not apply.



The minimum wage has led to an increase in wages

Does the minimum wage apply to people going to school?

The minimum wage applies to people going to school if they have turned 18 or have already completed a vocational training programme.



A legal minimum wage reduces the number of people who have to “top-up”, because they are dependent on social benefits despite full-time employment.

Does the minimum wage also apply to people who participate in employment promotion measures, such as 1-euro jobs?

No. Persons who participate in employment promotion measures are not employees. The aim of these measures is to reintegrate individuals into the labour market. To cover their living expenses, participants regularly receive support benefits pursuant to Book III of the Social Code (unemployment benefit) or Book II of the Social Code (basic income support for job-seekers).

Do foreign workers also get the minimum wage?

Yes. The minimum wage also applies to them, if they work in Germany - regardless of whether they are employed by a domestic or a foreign employer. The applicability of the Minimum Wage Act to employees of a foreign employer in certain areas of the transport sector is subject to scrutiny in the light of European law. Pending clarification of the European legal issues, an interim solution applies to the area of pure transit traffic. Monitoring and sanctioning of infringements by the customs authorities have been suspended for this area.

Which rules apply to cross-border employment?

There are no special rules for cross-border activities for workers employed in Germany. The public-law obligation to pay the minimum wage subject to a fine is limited to Germany. However, employers continue to be bound by their contractual obligations towards their employees even when borders are crossed. This includes the right to the minimum wage.

Do trainees get a minimum wage?

The general minimum wage does not apply to trainees under the Vocational Training Act. Their remuneration will continue to be governed by the Vocational Training Act.

Does the minimum wage apply to people with disabilities who work in workshops?

This depends on the nature of the employment relationship. If it is an employment relationship such as in integration enterprises, the minimum wage applies. If people with disabilities are in an „employee-like legal relationship“, for example working areas of recognized workshops, the minimum wage is not applicable to them.

What applies to the long term unemployed?

For employees who have previously been unemployed for more than a year, the employer may deviate from the minimum wage in the first six months after the employees' return to the labour market.

What applies to people with mini-jobs?

The statutory minimum wage applies for all workers, regardless of working time or extent of employment - and thus also for mini-jobbers. The statutory minimum wage of 8.84 euros per hour is a gross hourly wage. The employer's share of the contributions to social insurance are not taken into consideration. That means that employers are responsible for contributions to the statutory health insurance scheme and statutory pension insurance for mini-jobs in addition to the gross hourly wage. One aspect that is new is that since the introduction of the minimum wage employers must document the working hours of mini-jobbers, keep these records for two years and make them available in case of an examination by the customs authorities. The record-keeping requirement does not apply to mini-jobbers in private households or to close relatives of the employer (spouses, registered partners, parents, children).

Do seasonal workers get the minimum wage?

The statutory minimum wage of 8.84 euros also applies to seasonal workers. To facilitate the introduction of the minimum wage, the existing possibility of short-term, social-insurance-free employment was extended from 50 to 70 days. This scheme was set up to end by 31 December 2018. It does not affect the level of the minimum wage. For employees (including seasonal workers) in the agriculture, forestry and horticulture sectors, a nationwide uniform sector-based minimum wage is valid until 31 December 2017.

Do interns get the minimum wage?

Yes. As a fundamental principle, interns are entitled to minimum wage. Exceptions apply to mandatory internships, i.e. especially to internships that must be completed due to secondary education regulations, vocational training regulations or university regulations.

In the case of voluntary internships that do not last longer than three months, the individual is not entitled to minimum wage when the internship is for the purpose of career orientation or is undertaken parallel to vocational training or studies. In addition, the minimum wage does not apply to internships undertaken in connection with an introductory training programme conducted pursuant to Book III of the German Social Code or measures offered in connection with training preparation schemes pursuant to the Vocational Training Act.



The legal minimum wage will apply in all sectors starting 1 January 2018. Collective agreements may not undercut the minimum wage.

When a voluntary internship lasts longer than three months, is the minimum wage to be paid starting the first day or the fourth month?

In the case of voluntary internships (internships for the purpose of career orientation, vocational training or studies) that do not last longer than three months, the minimum wage does not apply. When this type of internship lasts longer than three months, the entire internship is subject to minimum wage, and minimum wage is to be paid from the first day on. This applies not only when it is known from the start that the internship will last longer than three months but also when a three-month internship is extended beyond three months.



Minimum wage during internships?

It is very easy to find out whether an internship is subject to the minimum wage by following this link: www.der-mindestlohn-wirkt.de/ml/praktikum.

Writing a thesis during a work placement - does the minimum wage apply?

The mere preparation of degree-related theses (such as a bachelor's, master's or doctoral thesis) does not mean that there is an internship, because the students do not do any operation work in the company. If they are not classified as employees either, there is no obligation to pay the minimum wage.

However, the obligation to pay the minimum wage may exist when an (accompanying) internship in which the student also is operationally active has been agreed to go with the thesis, and there is no exempting circumstance under the Minimum Wage Act. Whether these conditions are met will depend on the circumstances of each case.

What applies when provisions in collective agreements are inconsistent with the statutory minimum wage?

The minimum wage takes priority over collective agreement provisions that conflict with the minimum wage and are less favourable for workers. During the transition period until 31 December 2017, sectoral minimum wages based on the Posted Workers Act and the Temporary Employment Act may be below the statutory minimum wage, but starting 1 January 2017, they must be set at least at 8.50 euros.

Are piecework pay and monthly wages compatible with the minimum wage?

Every worker has a statutory right to the payment of the minimum 8.84 euros. It will still be permissible to agree piecework rate and monthly wages after the minimum wage has been introduced if it is guaranteed that a worker will still be paid the minimum wage for the actual hours worked in the accounting period.

In which cases must employers document the working hours of their employees?

To ensure that the minimum wage is actually paid for hours worked, in certain cases employers are subject to a documentation requirement. This applies generally for marginally employed employees (exception: mini-jobs in the private sphere) and sectors set out in the Act to Combat Clandestine Employment. These include construction, restaurants and hotels, freight forwarding, transportation and logistics, forestry companies, cleaning services, exhibition construction and the meat industry. Those who deliver newspapers and the employees of parcel services must also regularly document their working hours.


Only close family members (spouses, registered partners, parents, children), as well as employees whose regular monthly salary is higher than 2,958 euros (gross) are exempt from the documentation requirements. Employers are also exempt from the documentation requirement for workers who have earned more than 2,000 euros per month (gross) continuously for the past 12 months. Here it is important that these salary payments can be documented.

Thus, the minimum wage legislation is connected to already existing documentation requirements. The Working Hours Act for example, requires that for all employees all working hours over eight hours per day must be documented, i.e. overtime on working days and all working hours on Sundays and public holidays. Documentation is also compulsory for mini-jobs within the framework of the „de minimis guidelines“ of the social insurance providers and the Federal Employment Agency.

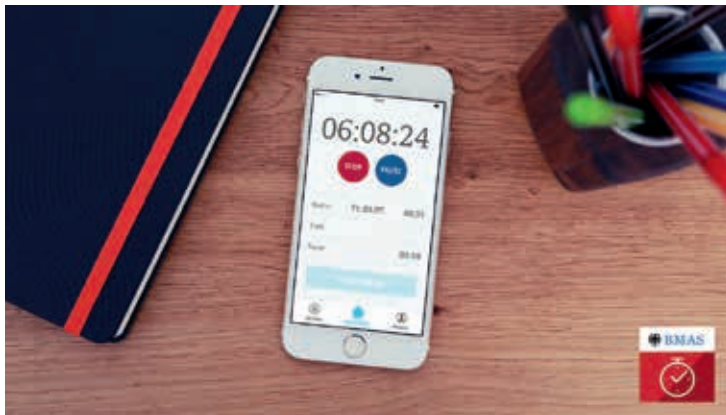
In which form are employers obliged to keep records to document working hours?

If employers are required to maintain records under the Minimum Wage Act (see above), they must document the start, end and duration of the daily working time of employees. This documentation requires no special form. It can be handwritten on simple timesheets. The specific time and location of the breaks must not be shown separately, and, for employees who work exclusively on the road and can allocate their time flexibly and on their own, it is sufficient to record the duration of the working time.

The app from the Ministry of Labour and Social Affairs: „einfach erfasst“

 for easy documentation.

To capture and report working hours, the Ministry has a free app for Android devices that is called „einfach erfasst“. You can download it from our website here: www.der-mindestlohn-wirkt.de/ml/app



Is a contractor liable if a subcontractor does not comply with the minimum wage law?

A contractor is liable for the observance of the minimum wage, if it engages another contractor for the provision of work or services. This so-called contractor liability has been in force in the Posted Workers Act for many years. The Minimum Wage Act makes use of this existing rule because it has proved its worth. Only contractor liability can prevent systems that aim to conceal exploitative working practices through chains of subcontractors. Without the regulation, there would be a gap in the law that would ultimately harm honest companies and employees alike.

According to the case-law on the Posted Workers Act, the liability is incurred if the contractor itself accepts a contractual obligation for the provision of work or services and commissions an additional contractor to fulfil this obligation. Private individuals are generally not affected, nor are companies that order a work or service that they themselves use for their own purposes. It is expected that this case-law is also applicable to the liability regulations of the Minimum Wage Act.

If contractor liability is applicable, the original contractor is also liable for the payment of the minimum wage if the contractor it appoints also uses further contractors to carry out the contract.

Example 1

Private individuals

Individuals are not subject to contractor liability, because it only applies to companies. Whether a letter is being sent, someone has been commissioned to do repair work in a private residence or a taxi is used - as a private person, you cannot be held liable for the payment of the minimum wage of companies.

Example 2

Companies

In many of the cases initially discussed in the media, companies are not responsible for the remuneration of employees of other companies that are commissioned for an activity. The award of contracts for the repair of company buildings is a classic case which does not give rise to the liability. For example, say a manufacturing company contracts with a plumbing company for the repair of a defective sink on the company's premises. In this case it does not transfer any of its own contractual obligations to the contractor because the manufacturing company itself does not provide sanitation services or undertake to do so.



The minimum wage protects workers in the low-wage sector against receiving unfair wages.

Who decides on adjustments to the minimum wage?

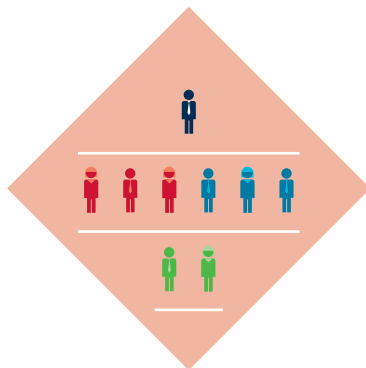
The level of minimum wage is reviewed by an independent commission of collective bargaining partners. In the context of an overall assessment, it has to review what minimum wage offers a reasonable minimum level of protection for workers, facilitates fair competition and does not endanger jobs. In June 2016, the Commission decided to raise the minimum wage to 8.84 euros effective 1 January 2017. It was guided in its decision by the development of negotiated wages in Germany.

Who is on the Minimum Wage Commission?

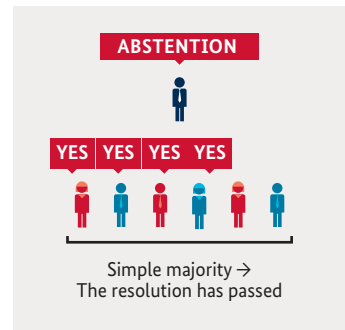
The Commission consists of a chairperson and six voting and two advisory members. Every five years the umbrella organisations of employers and workers each nominate three representatives for the Commission.

The two advisory members are not entitled to vote and are expected to contribute their academic expertise. All members are nominated by the social partners and then appointed by the Federal Government. To learn who the members are, you can consult www.der-mindestlohn-wirkt.de.

Minimum Wage Commission
decision procedures



The Commission has a quorum when at least half of its voting members are present. In other words, when **three or more** voting members are present. The two advisory members have no voting rights.



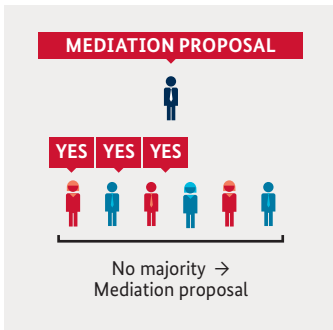
The Commission will take decisions with a **simple majority** of the voting members who are present. The chairman initially abstains from voting.

Who is responsible for monitoring compliance?

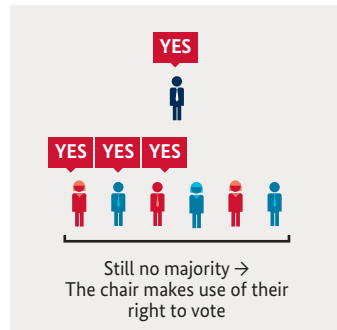
As has been the case in the past with sectoral minimum wages, this is done by the Customs units responsible for enforcing the law on illegal employment.

According to what system is the minimum wage monitored?

The Customs units responsible for enforcing the law on illegal employment do so using a risk-oriented approach. Compliance with the minimum wage is checked during all their audits.



In the event that a majority of votes is not reached, the chairperson submits a proposal for a **compromise**.



When, after further deliberations regarding the proposed compromise, a majority cannot be reached, the chairman will exercise his **right to vote** and cast the deciding vote.



What sanctions are imposed for violations?

Minimum wage violations can be punished with a fine of up to 500,000 euros. Violations of obligations in terms of oversight, such as the documentation of the working hours, can be punished by a fine of up to 30,000 euros. In addition, the respective company may be excluded from tendering for public contracts.

Who can employees turn to if they are not paid the minimum wage?

Customs is responsible for the prosecution of legal infringements. The minimum wage hotline can be reached at 030 60 28 00 28. It fields complaints and reports of infringements. In the case of complaints which require customs to become involved, callers can be transferred directly to the relevant customs office. Employees also have the opportunity to file their claim for the minimum wage with the competent labour court.

Who can I contact with questions about the minimum wage?

The minimum wage hotline answers all questions about the minimum wage no matter if you are from the general public, an employee or an employer. The hotline can be reached Mondays to Thursdays from 8:00 to 20:00 at 030 60 28 00 28.

Where can I find more information about the minimum wage?

A copious amount of information about the minimum wage can be found at the minimum wage website www.der-mindestlohn-wirkt.de. Under „Publications“ you can find the document „the minimum wage law in detail“, which deals with further questions comprehensively.

How can I quickly check to see if my salary is equivalent to the minimum wage?

With the minimum wage calculator on the minimum wage website www.der-mindestlohn-wirkt.de: If you enter your gross monthly salary, the calculator will determine if your gross hourly wage is below or above the minimum wage and by how much.



80 % OF THE POPULATION ARE FOR THE MINIMUM WAGE

Source: Federal Ministry of Labour and Social Affairs,
Survey by: INFO GmbH, April 2016



The minimum wage also protects entrepreneurs. It prevents competition on the basis of unreasonably low wages.

Do you have further questions about the minimum wage?

Then contact the minimum wage hotline. The hotline is for the general public, employees and employers alike.

The hotline can be reached **Mondays to Thursdays from 8:00 to 20:00** at **030 60 28 00 28**.

On the website www.der-mindestlohn-wirkt.de the Federal Ministry of Labour and Social Affairs provides information about current developments in the minimum wage. The document „The minimum wage law in detail“ can also be downloaded there.

Zusätzlich bietet das BMAS den **Gehörlosen-/Hörgeschädigten-Service** an. Auch hier werden Fragen zum Mindestlohn beantwortet.

The Federal Ministry of Labour and Social Affairs also offers a **service for deaf people and those with hearing impairments**.

It can also answer your questions about the minimum wage:

gebaerdentelefon@sip.bmas.buergerservice-bund.de

Fax: **030/221/911**

info.gehoerlos@bmas.bund.de

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