

Labour Law and Mini Jobs

A mini job is an employment relationship which is either low paid (maximum of 450 euro a month since 2013) or only lasts for a short time.

Mini jobs are normal employment relationships. They are subject to the same legal provisions as other employment relationships other than some particulars related to social security and taxes. Mini jobs, part-time, and full-time jobs are treated equally under the law.

Treated equally under the law

Employment contracts

Working hours

Holidays

Sickness and holiday pay

Maternity leave

Protection against unfair dismissal

Employment contracts: An employment contract can be concluded orally or in writing. In order to avoid misunderstandings, it is always best to agree an employment contract in writing. It is then easier to provide evidence should a conflict occur.

If employment last more than one month, written evidence of the employment relationship is required (§2 "Nachweisgesetz" [German law on evidence]).

Working hours / Overtime payment: Employees are generally not obligated to work overtime or revised working hours unless this is part of the original employment contract. This includes public holidays, shift work, and Sundays. Exceptions to this are defined in § 10 and 12 of the "Arbeitszeitgesetz" [German law on working hours]. Except where explicitly excluded in the employment contract or in case of emergencies, an employee has a right to be paid for overtime.

The employer and employee can also agree that the employee be on-call in case help is required. In such cases, a minimum number of daily and weekly paid hours must be agreed (§12 TzBfG² "Work on call").

Holidays: Mini-jobbers are also entitled to paid holiday. Employees are entitled by law to paid holidays numbering 4 times the number of days per week they work. No holiday must be claimed by the employee for days they do not normally work ("Bundesurlaubsgesetz" [German federal law on holidays]).

Examples: You work 5 days a week. You are entitled to 20 days holiday. This is true whether you work 8 hours per day or only 3 hours per day. If you only work 2 days per week, you are entitled to only 8 days holiday.

Important: If the employer grants full-time employees additional holidays, those with mini jobs must be given equal treatment. All employees of a given employer are entitled to the same number of holidays (adjusted based on the number of days per week they work).

Public holidays: Mini-jobbers have a right to continuation of salary on statutory public holidays, provided the holiday falls on a day he or she would normally have worked (e.g. Ascension Day, Good Friday etc., see also EntgFG³ §2). Important: It is forbidden for the employer to circumvent this rule by requiring an employee to make up the work on a different day.

¹ Law regarding evidence of the essential conditions applicable for an employment relationship (NachwG)

² Law on part-time work and limited employment contracts (TzBfG)

³ Law on the payment of wages on public holidays and in case of sickness (EntgFG)

Illness: Like all employees, those with mini jobs are entitled to 6 calendar weeks of paid sick leave.

Legal protection of working mothers: Women who are covered by a public health insurance company are entitled to a maternity grant (see §13 MuSchG [German law on maternity grants]). Should a pregnancy prevent an employee from working, those with mini jobs are also entitled to a maternity salary (see § 11 MuSchG⁴).

Protection against unfair dismissal: If employees with mini jobs **do not** work for a small business⁵ (§ 23 Para 1 KSchG⁶) and their employment relationship lasts longer than six months, they enjoy protection against unfair dismissal under the law. The dismissal must be in writing and be understandable. Employees, including those with mini jobs, have 3 weeks from the day written notice of dismissal is received to challenge it before the labour court as unjustified or illegal for other reasons.

The principle of equal treatment: Employees with fewer working hours may not be discriminated against relative to comparable full-time employees (§ 4 Para. 1 TzBfG "Prohibition of discrimination"). This applies to all privileges and benefits granted to employees by the employer. Exception: There is an objective reason for disparate treatment.

Example: Where full-time employees receive Christmas pay, those with fewer working hours, including mini jobbers, are entitled to equivalent Christmas pay proportional to the number of hours per week they work.

⁴ Law on the protection of working mothers (MuSchG)

⁵ Companies with a maximum of 10 full-time employees

⁶ Kündigungsschutzgesetz [German law on protection against unfair dismissal (KSchG)]

Moreover:

Employees can also use the mini job as a **stepping stone to a full-time job** and enjoy the same protections as part time employees under the § 9 "Teilzeit- und Befristungsgesetz" [German law on part-time and limited work] (TzBfG, "Extension of working hours"). According to § 9 an employer "is to consider a part-time employee [...] with priority over external candidates for an appropriate free position when they are equally qualified unless urgent commercial reasons or working hours requests by other part-time employees stand against this."

This priority rule for a company's "own" part-time employees also applies to employees with mini jobs.

Both Individual labour law and collective labour law apply to those with mini jobs. Individual labour law regulates the relationship between employer and employees, including employees with mini jobs.

Collective labour law regulates the relationships between employer and the works council or staff council as well as between the employer and the unions. Collective wage agreements (agreements between the employer and the union) and commercial or service agreements (agreements between employer and works or staff council) can determine conditions for all employees, including those with mini jobs, if their position is covered under the agreements.

This document can be found on our web page (Information sheet Employment law for mini jobs)

www.minijob-machmehrdras.de

Further information also available from the Minijob-zentrale at:

www.minijob-zentrale.de